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Historical background

By the early eighteenth century, Britain emerged as the leading colonial power in the Caribbean with the largest number of colonies. British ascendancy brought a unique dimension to the exploitation of resources and cheap labour. It was distinguished by its concentration on organized sugar production, with a close link between the plantocracy and the colonial government. Slavery, followed by indentureship well into the nineteenth century, created structures of inequality. There was a sharp distinction between managers, who through their control of capital, monopolized economic and political power, and the workers, who were in virtual servitude and bondage.

Labour relations were therefore shaped by the authoritarian nature of social relations, with the plantocracy in a position to control and dominate the way in which labour issues were dealt with in major industries and enterprises. This was further facilitated by the state, which provided a supporting role for the plantocracy. The life of the plantation labourer, in particular, was characterized by poverty, physical hardship, malnutrition and disease. These conditions persisted into the 1930's and provoked massive labour and social upheavals throughout the British Caribbean during this period. Discontent with the worsening social and economic conditions expressed itself in increasing, intense public agitation and labour unrest. To appease the growing discontent, the British Government, in August 1938, appointed a *Royal Commission under Lord Moyne* to investigate and report on the general labour and social conditions in the British West Indian colonies. The Commission reported that the conditions were such that workers were virtually unprotected.

Accordingly, one of the recommendations of the Commission resulted in the enactment of Labour Acts, which established Labour Departments with the mandate:

- to promote industrial peace;

- . • to regulate the relations between workers, trade unions and employers;
- . • to assist and advise trade unions and employers; and
- . • to protect the interest of workers.

The Labour Acts also defined the powers of labour commissioners and ministers.

The foundations for the current labour administration systems were thus firmly established, with specific mandates flowing from Labour Acts. In particular, the mandate for an *active advisory service* to assist and advise trade unions and employers was present from the inception, but its potential is still to be effectively and extensively exploited for national development.

The powers of labour commissioners and ministers allowed for various forms of third party intervention – consultations, negotiations, conciliation, mediation or arbitration. The range of dispute settlement machinery and methods available in industrial relations has recently become a model for civil society under the term of *alternative dispute resolution* (ADR), which suggests forms of dispute settlement that could be an alternative to using the lengthy, protracted and expensive judicial system. This is a significant contribution of industrial relations to civil society, notably as regards its commercial relations.

Emergence of trade unions and trade union law

Trade Unions originally had difficulty in establishing their legal position. Their legal existence was based on Trade Union Laws enacted between 1919 -1950, with subsequent legislation incorporating and maintaining the original protection of their immunities from criminal prosecution for breach of contract, agreement or trust. Trade Unions had to struggle for voting rights, public education and social legislation in a fight against the interests and prejudices of traditional society. They were initially, in essence, part of the nationalist political movements for political independence.

In this context, where the trade unions had to fight for political and social status, the labour relations systems reflected a greater degree of political involvement and action to influence public policy. Industrial politics, political unionism, and trade union-based political parties are rooted in the history and tradition of Caribbean societies. The tradition of industrial or business unionism, vis-a-vis political unionism, was therefore not part of the genesis of trade unionism in the Caribbean. This reality still affects the dynamics of contemporary labour management relations.

Voluntarism in Industrial Relations

The Caribbean inherited the tradition of *voluntarism in industrial relations*, a tradition which enabled trade unions and employers to regulate their own relations without interference from public authorities. The voluntary system of industrial relations is premised on freedom of contract and freedom of association, and in terms of the British tradition, is based on:

- . **1. The principles of free collective bargaining which imply:**
 - . • a preference for joint trade union and employer regulation of employment relations, versus state regulation;
 - . • regulation of relations by their own procedural rules;
 - . • maintaining their autonomy and not readily welcoming external intervention;

and

- acceptance of assistance through conciliation, mediation, arbitration and public inquiry to enable them to reach their own agreement.

.2. Legal abstention in industrial relations which implies:

- minimum legal regulations and minimum state support;
 - keeping industrial disputes out of the courts because of a fear of the courts and their orientations;
 - reliance on the law of contract and common law to govern employment relations;
 - non-legalistic collective bargaining; and
- voluntary recognition of trade unions for collective bargaining purposes.

The voluntary tradition however, never meant a total rejection of state support or social legislation, but that the industrial method, through collective bargaining, took priority over state support or political action¹.

Deviation from voluntarism

There are significant deviations from the voluntary tradition of industrial relations. They started in 1965 when Trinidad and Tobago created a strong legalistic system with its *Industrial Stabilisation Act* and its successor, the *Industrial Relations Act* of 1972 which established the first Industrial Court in the English-speaking Caribbean. The principles of voluntarism have been substantially challenged and subsequently modified by other legislative interventions in the industrial relations arena in the Caribbean for the:

- regulation of collective bargaining relations;
- determination of appropriate bargaining units;
- determination of trade union recognition;
- intervention of the state in the national/community interest;
- compulsory dispute resolution machinery in the essential services/ industries;
- statutory powers to establish arbitration tribunals or boards of inquiry;
- establishment of final adjudication machinery in the form of Industrial Courts and standing Industrial Tribunals;
- requirements for greater accountability by trade unions and employer organizations to their membership and for fulfilling statutory obligations;
- greater social protection; and
- employment protection.

These interventions present a mixture of voluntary and compulsory systems; voluntary in the initial stages of consultation, negotiations,

¹ Allan Flanders: *The Theory and Reform of Industrial Relations* (Faber and Faber, London, 1975) pp. 94-99

and conciliation/mediation. It then becomes compulsory when final adjudication machinery is required. There is also a mixture of the use of the method of political unionism and industrial or business unionism as appropriate, and the continued encouragement by actors in some national systems to retain the political methods in labour relations, along with the industrial methods.

The relevant questions that can be asked concerning the future of Caribbean labour relations are: What is the future model for an effective labour relations system? Should the system be more voluntary, or more legalistic, or more of a consensus-based model? Can the use of the political methods now be effectively and strategically employed to explore the potential of national social partnership accords for economic and social development? Can the consensus-based model, as exists in Ireland and Barbados, offer new possibilities for national development strategies in the Caribbean?

2

Overview of Statutory

The province of Caribbean labour law, as gleaned from the statute books for the period from 1919 – 2005, includes provisions for:

- . • the employment relationship between employers and employees;
- . • trade union administration and governance;
- . • collective bargaining between trade unions and employers;
- . • statutory control of certain conditions of employment;
- . • employment protection and severance pay;
- . • legislation concerning trade union recognition;
- . • regulation of industrial action; and
- . • various means and machinery for dispute settlement.

Aspects of national legislative frameworks, as at December 2005, are summarized in Part II. These summaries however, are not substitutes for the actual legal texts of the relevant legislation for each of the twenty-one countries and overseas territories of the English and Dutch-speaking Caribbean.

Caribbean labour laws reveal some distinctive and common features, characteristics, institutions, procedures and regulations as follows:

Labour Codes

A labour code as a single, comprehensive and consolidated body of labour law obtains in:

-Antigua & Barbuda and British Virgin Islands

and is currently under review in Saint Lucia.

Industrial Relations Codes of Practice

Industrial Relations Codes of Practice serve as a guide for the conduct of labour relations by the social partners. It is operational by legislation in: -Bahamas and Jamaica.

The Code of Practice operates without the requirement of legislation in: -Bermuda; and
-Guyana (*Handbook for employers and The System of Industrial Relations in Guyana*).

Labour Commissioners as Registrars of Trade Unions

Labour Commissioners are required by law to serve as Registrars for the registration of trade unions in:
-Antigua & Barbuda, Bahamas and Grenada.

A Public Officer as Registrar

A Public Officer, other than the Labour Commissioner, serves as the Registrar of Trade Unions in:
-Guyana, Belize, Dominica, Jamaica and Bermuda.

Employment Protection Provisions

The terms and conditions of employment of employees, including the regulation of termination/dismissal, are provided by law in: -Antigua & Barbuda, Dominica, Grenada, Guyana, Saint Lucia, St.

Vincent & the Grenadines, St. Kitts & Nevis, Bahamas, Bermuda, Belize, Cayman Islands, Montserrat, Turks & Caicos Islands, British Virgin Islands and Barbados.

Employment Tribunal

Under its Employment Act 2000, Bermuda established an *Employment Tribunal* with jurisdiction to hear and determine complaints to ensure fair treatment of employees.

Severance Pay Provisions

Statutory provisions for severance pay exist in: -Barbados, Trinidad & Tobago, Antigua & Barbuda, Bahamas, Belize, Dominica, Guyana, Jamaica, Saint Lucia, St. Vincent & the Grenadines, Netherlands Antilles, Aruba, Bermuda, Montserrat, British Virgin Islands, Cayman Islands and Turks & Caicos Islands.

The laws in both Barbados and Dominica provide for the establishment of a *severance pay/redundancy fund* managed by the national social security board to guarantee benefits.

Trade Union Recognition accorded/determined:

The law empowers the following public officials or bodies to accord or determine trade union recognition for collective bargaining purposes:

- **Labour Commissioner**
-Antigua & Barbuda and Saint Lucia.
- **Tripartite, independent body**
-Belize, Guyana and Trinidad & Tobago.
- **Voluntary/statutory procedures** (assistance of Labour Department)
-Barbados, Dominica and Jamaica.

- **The Minister**
 - Bahamas, Grenada and Belize (on appeal to the Minister on *decertification*).
- **Labour Relations Officer**
 - Bermuda
- **The Tribunal**
 - Bermuda on appeal against decertification by the Labour Relations Officer.

Extent of support for trade union recognition

- In keeping with the law, more than 50% support of the bargaining unit is required for the recognition of trade unions for collective bargaining in: -Belize, Bahamas, Aruba, Netherlands Antilles and Trinidad & Tobago.
- A majority/less than 50% support of the bargaining unit is required for the recognition of trade unions for collective bargaining in: -Antigua & Barbuda, Dominica, Guyana, Grenada, Jamaica

and Saint Lucia.

Joint Bargaining Rights

In Jamaica, in a ballot for trade union recognition between two or more trade unions, and where no union wins a majority, the law allows any two unions, each with at least 30% support and at their request, to be accorded *joint bargaining rights* for collective bargaining purposes.

In Dominica, the law allows for two or more unions to make a claim to be recognized as the joint bargaining agent. In such a case, the law treats the unions as if they were a *single union*.

Agency Shops / Service Contribution

There is a legal requirement for employees, who exercise their freedom not to join the recognized majority trade union, to pay the equivalent of union dues in lieu of membership to other specified causes: -in Trinidad & Tobago, the law stipulates that 50% of the dues be

paid to the Cipriani College of Labour and Cooperatives or to the Industrial Relations Charitable Fund; -in Bermuda, the law confers on the employee the right to stipulate that the full contribution be paid to a charity of her/his choice; and

-in Grenada, the Labour Relations Act, 1999, requires employees who have not authorized the employer to make periodic deductions in favour of the recognized majority union, to pay service contributions to that trade union, equal to its regular membership subscription. (Sec. 43)

Dispute settlement procedures and machinery

Procedures are generally outlined in recognition agreements between employers and trade unions, and usually include reference to conciliation/mediation, and arbitration.

- **Statutory requirements** to include *conciliation/mediation/ arbitration tribunal* as part of the representation procedures for the settlement of disputes in collective labour agreements, are provided for in the laws of Bahamas, Jamaica, Saint Lucia and Grenada.

- **Conciliation/mediation services**

Conciliation/mediation services are provided by the state through the Department of Labour in the English-speaking countries; they are generally voluntary, but compulsory in Bahamas, Antigua & Barbuda and Dominica at the intervention of the Minister. In Dominica, the law expressly protects the confidentiality of the conciliation process thus ensuring that the conciliator cannot be compelled by any judicial authority to disclose confidential matters without the consent of the concerned party.

The Labour Code of Antigua & Barbuda allows the Labour Commissioner to mediate or utilize any other device to promote a voluntary settlement. The legislation of Bermuda, St. Kitts & Nevis, and Turks & Caicos Islands, also provide for mediation.

Independent mediation services

Mediation services are provided by an agency of the state in the Dutch-speaking countries/territories of Suriname, Aruba and the Netherlands Antilles.

Decisional Officer

In Antigua & Barbuda, the *Labour Code* empowers the Minister to refer certain disputes to a *Decisional Officer*, appointed by the Minister, to hear and determine certain matters in an independent manner or as required by the Code.

Hearing Officer

The laws provide for a *Hearing Officer(s)* to hear and adjudicate on matters referred to him/her in the following three countries: -Antigua & Barbuda, St. Vincent & the Grenadines and St. Kitts & Nevis.

Standing/permanent Industrial Tribunals

The laws establish standing or permanent arbitration tribunals to hear and adjudicate in matters referred to the tribunals in: -Dominica, Jamaica, Bahamas, Bermuda, Cayman Islands, Antigua & Barbuda (*code Arbitrator*) and Turks & Caicos Islands.

Ad hoc or standing tribunal for essential services/industries and other services

This is provided for in the laws of:

-Dominica, Barbados, Guyana, Belize, Grenada, Anguilla,

Suriname, Saint Lucia, Montserrat, St. Vincent & the Grenadines, St. Kitts & Nevis and Bermuda.

Industrial Courts

Labour laws establish industrial courts to hear and determine trade disputes and other related matters under their jurisdictions in two countries: -Antigua & Barbuda and Trinidad & Tobago.

Boards of Inquiry

The laws provide for the appointment of Boards of Inquiry to handle trade disputes as well

as to inquire into the economic and industrial conditions in the following countries:

-Barbados, Belize, Dominica, Jamaica, Saint Lucia, St. Vincent &
the Grenadines, Bermuda, Anguilla and St. Kitts & Nevis.

Private arbitration

The collective labour agreement between the Bahamas Hotel Employers' Association and the Bahamas Hotel Catering and Allied Workers' Union provides for binding private arbitration to adjudicate on certain disputes in keeping with their agreement. This facility is regularly utilized to provide final settlement *within the Hotel industry in the Bahamas*.

Registration and enforceability of Collective Agreements

There are provisions in the laws for the legal *enforceability of collective agreements* in:

-Trinidad & Tobago and Antigua & Barbuda (Industrial Court)
-Bahamas (Industrial Tribunal)
-Guyana and Saint Lucia - legally binding, unless stated otherwise

(ordinary court).

Tripartite Labour Advisory Bodies/Boards/Committees

The laws provide for the establishment of *tripartite bodies* on national and international labour affairs in:

-Trinidad & Tobago, Antigua & Barbuda, Belize, Dominica, Guyana,

Bahamas, Grenada, Jamaica, Suriname, Montserrat (multipartite), Saint Lucia, Netherlands Antilles and Aruba.

Public interest and intervention of Attorney General

The laws provide for the intervention of the Attorney General in the public interest when matters are before the Industrial Court in Trinidad & Tobago; or before the Industrial Disputes Tribunal in Jamaica.

Regulation of Industrial Action

Caribbean labour laws provide for various forms of regulations of, and limitations on industrial actions:

- **Strike notice**

In keeping with the laws, strike notice is required to be given by trade unions, when they contemplate such action, or before such action is taken in: -Trinidad & Tobago, Antigua & Barbuda, Bahamas, St. Vincent

& the Grenadines and Montserrat. -Netherlands Antilles -*cooling off period* – normally 30 days, or 90 days in essential services or industries.

-Bermuda - twenty-one days for industrial actions in an essential service.

- **Injunction against industrial action in the national interest**

In the interest of the national community, the state can apply to the Industrial Court/Civil Court for injunctions against industrial action in: -Trinidad & Tobago, Antigua & Barbuda, and Jamaica.

- **Prohibition of industrial action in essential services/ industries**

The laws prohibit industrial action in essential services/industries and provide for appropriate final dispute resolution machinery in: -Trinidad & Tobago, Belize, Guyana,

Bahamas, Jamaica,

Grenada, Saint Lucia, Bermuda and St Vincent & the Grenadines.

- **Supervision of the ballots by Registrar for union elections and strikes**

In the Bahamas, the law empowers a designated public official to supervise and ensure the proper conduct of union elections, and the proper conduct of any strike ballot.

Statutory requirements for Annual Reports

The law requires the following countries to publish an annual report:

- by the President of the Industrial Court; and the Chairman of the Registration, Recognition and Certification Board in Trinidad & Tobago.
- by the Department/Ministry of Labour in:
 - Grenada, Guyana, Dominica, Jamaica, Belize, Saint Lucia, St. Kitts & Nevis and Anguilla.

Powers of labour officers/inspectors to prosecute/institute proceedings in court in their own name, obtain in the legislation of: -Barbados, Belize, Cayman Islands, Suriname, Grenada, Guyana, Montserrat and Anguilla.

Responsibilities of the Labour Commissioner/Head of Labour Administration

In terms of the law and practice, the following responsibilities fall under the purview of Labour Commissioners and Heads of Labour Administration in most Caribbean countries:

- . • statutory duties and functions;
- . • principal adviser to the Government on labour matters;
- . • general management of the labour administration functions;
- . • national labour policy formulation, including labour legislation;
- . • regional and international labour affairs;
- . • ILO relations, Conventions and Recommendations;
- . • industrial relations including recommendations for good industrial relations policies and practices, freedom of association, collective bargaining and conciliation/mediation;
- . • national occupational safety and health policy and programme;
- . • supervision of a programme of work for the social and technical inspections of workplaces;
- . • institute/cause to be instituted prosecution for breaches of the law;
- . • annual report of the department – its work, labour market information and statistics, and assessment of the country's labour relations environment;
- . • research, studies and publications of timely reports;
- . • public employment services;
- . • regulating private employment services;
- . • participating in national manpower planning;
- . • advisory services and outreach programme for employers and trade unions;
- . • fostering linkages with other agencies/ministries for the coordination of the labour administration function;
- . • promoting tripartite consultation, social dialogue and social partnership;
- . • personnel management - staff recruitment, training, career development

and general supervision; and

- management of other resources.

Other statutory duties in some countries include:

- to serve as Registrar of Trade Unions (Antigua & Barbuda, Bahamas, Saint Lucia);
- to determine *appropriate bargaining units* and to certify trade unions as bargaining agents (Antigua & Barbuda, Grenada, Saint Lucia);
- to give approval for dismissal of employees within the private sector (Suriname, Aruba, Netherlands Antilles, St Vincent & the Grenadines);
- to review applications for/issue work permits to non-nationals (Antigua & Barbuda, Dominica, Saint Lucia, Jamaica, Turks & Caicos Islands);
- to serve as the Executive Secretary for the National Labour Board and Board of Review (Antigua & Barbuda);
- to function as a Hearing Officer (Antigua & Barbuda);
- to stop the operations of an enterprise for safety reasons (Netherlands Antilles, Aruba);
- to serve as an ex-officio Chairperson of tripartite labour advisory bodies (Grenada);
- to summon witnesses to assist in any enquiry (Antigua & Barbuda); and
- to refer a trade dispute to the Industrial Court (Antigua & Barbuda).

Powers of Labour Ministers

Caribbean labour law, as outlined in Part II, empowers Ministers to:

- establish tripartite labour advisory bodies;
- intervene in trade disputes;
- give explicit permission for the termination of employment (Suriname);
- use his/her good offices to conciliate/mediate in collective industrial disputes;
- refer disputes to the *Decisional Officer* (Antigua & Barbuda);
- refer disputes to the *Hearing Officer* for determination (Antigua & Barbuda, St. Kitts & Nevis and St. Vincent & the Grenadines);
- refer trade disputes to the final adjudication machinery;
- to appoint members of tripartite bodies, boards and tribunals;
- determine *appropriate bargaining units* of bargaining agents (Domonica and Grenada); • order poll for trade union recognition (Grenada and Jamaica);
- recognize/certify trade unions for collective bargaining purposes (Grenada);
- review and register collective agreements (Trinidad & Tobago);
- apply for injunction/prohibition in the national interest, against industrial action (Trinidad & Tobago and Jamaica); and
- make regulations for the functioning of labour institutions, and give effect to labour legislation.

The social partnership option

Social dialogue leading to partnership agreements at the enterprise, sectoral or national level is emerging as an important development and trend in the Caribbean.

- **National Agreements Barbados**, drawing from the Irish model and

experience, is the only Caribbean country, which has successfully negotiated and concluded five tripartite protocols on Prices and Incomes Policy and social partnership, since 1993.

- **Other initiatives towards social partnership** have been taken in:
-Jamaica (*Sectoral Agreements*) -Curacao (*Vision Curacao 2020*) -Trinidad & Tobago (*Compact 2000; Vision 2020; Principles of Fairness 2005*) -Grenada (*Memorandum of Understanding*) -Suriname (*Joint Declaration: Labour & Management; Tripartite Council 2002; Social and Economic Council 2004*) -Guyana (*Draft First Protocol 2000– GTUC/CAGI*) -Bahamas (TRIFOR – national tripartite forum) -St. Vincent & the Grenadines (National Tripartite Committee; Social and Economic Council)
- **Social dialogue at the enterprise level** -As an extension to collective bargaining, a number of firms have concluded framework agreements to promote higher level social dialogue at the enterprise level.

Conclusion

The survey of Caribbean labour laws reveals that there are substantial bodies of legislation on the statute books. These seem to be adequate for the conduct of labour relations. The legislative summaries in Part II for each country and territory deal with certain aspects of the law: protection of trade unions, employment protection, labour institutions created and various methods for dispute resolution. However, there are still compelling challenges.

The challenges require the actors in the labour relations systems to positively and strategically utilize the national institutions, mechanisms, means and procedures available. There are also challenges to consolidate, revise, rationalize and introduce new standards into a comprehensive national labour code to facilitate the effective conduct of labour relations.

The actors are further required to advocate for the creation of more powerful, influential and modern labour ministries with adequate resources to enable them to contribute to national development, through a proactive programme of advisory services designed to promote enterprise partnership and national agreements.

3

**The Mission of the
ILO and obligations
of member States**

The International Labour Organization (ILO) is regarded by member States as the most influential and universally-recognized global organization on labour matters, setting international standards for the conduct of labour and social relations. They accept the relevance of the ILO as “*the global reference point for knowledge on employment and labour issues*”² now, and in the future.

The reasons for acceding to its membership include the fact that the ILO is a specialized agency within the United Nations system and has an inclusive participative structure as well as an enduring mission. With its distinct tripartite structure, the ILO brings together governments, employers and workers in the pursuit of social justice and better living and working conditions of people everywhere.

The ILO was established in 1919 to protect the fundamental rights of all workers, to promote human and social development and to foster a humane society. The organization is guided by the affirmation in the preamble to its Constitution that: “*Universal and lasting peace can be established only if it is based upon social justice*”; and by the principles enunciated in the Declaration of Philadelphia, 1944.

The Declaration of Philadelphia reaffirmed the fundamental principles on which the ILO is based and states that:

² *The Director General of the ILO, Juan Somavia, in his report “Decent Work” to the 1999 International Labour Conference in Geneva.*

- . • *Labour is not a commodity;*
- . • *Freedom of expression and association are essential to sustained progress;*
- . • *Poverty anywhere constitutes a danger to prosperity everywhere;*
- . • *All human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity.*

These are abiding and guiding principles to which member States can identify, subscribe and support.

The ILO recognizes that fundamental principles and rights at work constitute yardsticks to measure respect for human rights; and that the state, with the support of the social partners and civil society, should act as guarantor, protector and promoter of human rights of its citizens and persons residing within its borders and territories, including migrant and foreign workers. These ideals and principles are of enduring relevance and will continue to impact on employment relations in terms of opportunities and problems in this heightened age of globalization and ever changing production systems with rapidly advancing new technology.

Throughout its rich history, the ideals and affirmations in its Constitution informed the work of the ILO. Its current programme sets out four strategic objectives, which will impact on economic, social, and human development globally, now and in the foreseeable future. These strategic objectives are:

- . • *To promote and realize fundamental principles and rights at work;*
- . • *To create greater opportunities for women and men to secure decent employment and income - in conditions of freedom, equity, security, and human dignity;*

- To enhance the coverage and effectiveness of social protection for all;
- To strengthen tripartism and social dialogue.

These four objectives together define the ways in which the ILO can promote the goal of *decent work*. “Decent work means *productive work in which rights are protected, which generates an adequate income, with adequate social security protection. It also means sufficient work ...It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers’ rights and social standards*”.³

Fundamental Human Rights and Development

Governments, employers’ and workers’ organizations must seek actively to build national consensus on economic and social policy, which aims at promoting a system of labour and social relations consistent with international standards, norms, and principles. These standards and principles should be reflected in national policy, legislation and practice, including at the enterprise level. The principles are set out in various international instruments, in particular, the ILO’s international labour Conventions and Recommendations. Conventions are open to ratification by ILO member States and are legally-binding for those who have ratified. Recommendations, on the other hand, are not legally-binding but provide guidance to policy, legislation and practice.

The *ILO Declaration on Fundamental Principles and Rights at Work*, adopted by the International Labour Conference (ILC) in June 1998, marked a re-commitment and a re-affirmation of the obligation of the 178 member states, by virtue of their membership in the ILO, to respect, to promote and realize in good faith the principles concerning:

- the rights of freedom of association and effective recognition of the right to collective bargaining;
 - the elimination of all forms of forced or compulsory labour;
 - the effective abolition of child labour; and
 - the elimination of discrimination in respect of employment and occupation.
- Convention No. 87: Freedom of Association and Protection of the

There are eight fundamental ILO Conventions which are related to these principles and they are:

³ Juan Somavia: *Decent Work - Report of the Director-General to the 87th Session of the International Labour Conference*, (Geneva, 1999)

Right to Organize, 1948;

- Convention No. 98: Right to Organize and Collective Bargaining, 1949;
- Convention No. 29: Forced Labour, 1930;
- Convention No.105: Abolition of Forced Labour, 1957;
- Convention No.138: Minimum Age, 1973;
- Convention No.182: The Worst Forms of Child Labour, 1999;
- Convention No.100: Equal Remuneration, 1951 and
- Convention No.111: Discrimination (Employment and Occupation), 1958

The principles of these fundamental Conventions establish a social minimum at the global level. These are internationally-recognized labour standards on basic human rights at the workplace, which will continue to impact on the conduct of labour and social relations in the future.

Support for these labour standards was expressed in other international fora in recent years, notably at the UN World Summit for Social Development (Copenhagen, 1995), and the Ministerial Conference of the World Trade Organisation (WTO) in Singapore (1996). This WTO conference *marked a renewed commitment to internationally- recognized core labour standards and identified the ILO as the competent body to deal with, and set such standards, while rejecting the use of labour standards for protectionist purposes.*

Ratification of ILO Conventions by member States signals their desire to:

- . • improve labour conditions;
- . • regulate in an equitable manner international mobility of labour;
- . • enact labour legislation in line with ILO standards; and to
- . • demonstrate an open commitment to international labour standards, which serve as global benchmarks to: -promote social justice; -show the way to social and economic progress; -influence enterprise policies and practices;

⁴ *The ILO: What it is, What it does:* (International Labour Office, Geneva, 1999).

- influence national policy and law; -help prevent the danger of slipping backwards into the adoption of repressive legislation, policies and practices; and -assist in the conduct of labour and social relations.

Obligations of ILO member States concerning Conventions and Recommendations

In accordance with *Article 19 of the Constitution of the ILO:*

- **Submission of Conventions and Recommendations to the competent authorities:**
 - Copies of newly-adopted Conventions and Recommendations are sent to all member States so that they can consider them for application in their countries and for ratification.
 - Each member State is required to bring adopted Conventions and Recommendations before the competent authority/ authorities (usually Cabinet and/or parliament) for appropriate actions – enactment of legislation or otherwise. The competent national authority should normally be the legislature to ensure that there is public attention and discussion.
 - The presentation to the competent authority/authorities is to be done within *twelve months* or, in exceptional circumstances, *eighteen months* from the closing of the session of the International Labour Conference (ILC) which adopted the Convention and/or Recommendation.
 - Member States are required to inform the Director-General of the International Labour Office of the measures taken in line with Article 19 of the ILO Constitution to bring Conventions and Recommendations to the competent authority/authorities and the action taken by such authority/ authorities.
 - Since ratification is not an obligation, governments are free to decide on the nature of their proposals on Conventions and Recommendations, including whether or not to propose ratification.
- **Ratification of Conventions**
 - If the competent authority consents to ratification, member States will advise the Director-General formally of the

ratification of the Convention and will take such action as may be necessary to give effect to the provisions of ratified Conventions by bringing their legislation and practice in line with the Convention.

- **Reports on Unratified Conventions and Recommendations**

Member States are required to report on the status of their law and practice in relation to unratified Conventions and Recommendations, to the Director- General of the ILO at appropriate intervals as requested by the Governing Body. They are required to indicate the extent to which effect has been given or proposed to be given to any of the provisions of the Conventions not ratified, as well as of Recommendations, by:

-legislation; -administrative action; -collective agreement, or otherwise.

- **Reports on Ratified Conventions**

In accordance with *Article 22 of the Constitution of the ILO*, each member State agrees to report regularly to the International Labour Office on measures taken to give effect to the provisions of the Conventions to which it is a party, as requested by the ILO's Governing Body. The Governing Body has decided on two-year and five-year reporting cycles for different groups of Conventions.

The Caribbean's record of ratifications

The Caribbean has a good record on the ratification and observance of the fundamental labour standards. The record as at 30 November 2005, shows:

- . • Convention No. 29; Convention No.87; Convention No.98; and Convention No.105 – ratified by all member States;
- . • Convention No.100; Convention No.111 - ratified by 12 member States;
- . • Convention No.138 - ratified by 10 member States; and
- . • Convention No.182 - ratified by 12 member States

Grenada incorporated fundamental principles and rights at work into its law through its *Employment Act of 1999*. Belize, through its *International Labour Convention Act 1999*, gives the force of law to all the ILO Conventions it has ratified. The record of ratification for three other important international labour Conventions for tripartite consultation and labour administration is as follows:

- . • Convention No.144: Tripartite Consultation (International Labour Standards), 1976 - ratified by 11 member States
- . • Convention No.150: Labour Administration, 1978 – ratified by 6 member States
- . • Convention No. 81: Labour Inspection, 1947 - ratified by 10 member States.

Tables illustrating the ratification of Conventions by Caribbean member States, as at 30 November 2005, are given in Appendix I.

Caribbean countries however, face the challenge of weak infrastructure for enforcement. Therefore, governments' efforts to regulate and enforce labour laws need to be complemented by action on the part of employers and trade unions to create more favourable conditions for compliance with such standards at the enterprise levels.

In fact, there is an increasing awareness that approaches are required that will facilitate global competitiveness, attractiveness to investors and the creation of new employment

opportunities, while at the same time meeting decent work standards. The requirement for a more consensual approach among government, management and labour to improve productivity and enterprise performance, and to promote human, social and economic development, offers new opportunities to achieve a reassessment on the part of enterprise management of the advantages of compliance with international labour standards.

4

The Social Partnership Option

Tripartism and social dialogue on social and economic matters within member States should be encouraged as a matter of high priority. This approach promotes active consultation and cooperation at the industrial and national levels among public authorities as well as workers' and employers' organizations in order to foster mutual understanding and good relations and to find agreed solutions to socio-economic problems. The promotion of social justice in the state community could be achieved only if the social partners themselves are involved in the search for appropriate solutions through negotiations and social dialogue. The state however, has a critical role to play in the success of the tripartite social dialogue process.

*"Tripartism and social dialogue ...guarantee participation and a democratic process...The evolving global economy offers opportunities from which all can gain, but these have to be grounded in participatory social institutions if they are to confer legitimacy and sustainability on economic and social policies."*⁵

The pillars of tripartism -constituted by the state, employers' organizations and workers' organizations should be strong and effective to engage in social dialogue, and be based on the principles of trust and good faith. Success in the mutual outcome of social

⁵Juan Somavia: *Reducing the Decent Work Deficit: A global challenge* -The Report of the Director-General at the 89th Session of the International Labour Conference, (ILO, Geneva, 2001).

dialogue requires national commitment and national political will, and the full commitment of employers and workers and their organizations. As Mulvey notes in a report to the ILO:

*"...social dialogue, tripartism needs to be strengthened, encouraged and supported. This requires mutual support, respect and understanding. It also requires a high degree of trust between the social partners. The building of that trust, its maintenance and its sustainability requires a high degree of commitment and leadership."*⁶

The legislation in most Caribbean countries provide for the establishment of tripartite committees/boards. These are advisory bodies which generally review legislation, working conditions, international labour standards and other matters pertaining to national labour policy. This contrasts with the new trend towards broader social partnership as outlined below.

There are outstanding models of national social partnership agreements in Ireland and Barbados. From the late 80's and early 90's, the social partnership and consensus-based approaches in Barbados and Ireland resulted in national agreements, which have had a continuing positive impact on the achievements of economic growth and social progress. These agreements were the outcomes of serious negotiations undertaken in good faith between the governments and the other social partners. This recourse to the social partnership option had widespread support among the major social and economic interests in these countries, and fundamentally changed the traditional confrontational approach in managing national socio-economic affairs.

The social partnership agreements provide a solid foundation for the economic growth and development of these countries. These have resulted in a very good industrial relations environment to the extent that Ireland is attracting many substantial investors, and is one of the

*Kieran Mulvey: Chief Executive of the Irish Labour Relations Commission in a Report to the ILO Caribbean Office on Labour Administration (1997)

fastest growing economies in Europe. In recent years, both Ireland and Barbados have recorded the lowest incidence of industrial action within the European Union and CARICOM respectively.

National Agreements in Ireland and Barbados

The social partnership at the national level in Ireland is an attractive model for Caribbean countries. Barbados, drawing from the Irish model, developed its own national agreements. Other Caribbean countries are considering the social partnership models of Ireland and Barbados to forge their own national agreements.

IRELAND

National Agreements

Since 1987, the following five nationally-agreed programmes were negotiated among the social partners: Government, Employers, Trade Unions and Farmers' Organizations as well as the community and the voluntary sector:

- . • *Programme for National Recovery: 1987-1990;*
- . • *Programme for Economic and Social Progress: 1991 – 1992;*
- . • *Programme for Competitiveness and Work: 1993-1996;*
- . • *Partnership 2000 for Inclusion, Employment and Competitiveness: 1997-2000; and*
- . • *Programme for Prosperity and Fairness: 2001-2002.*

Other programmes negotiated beyond 2002 continue to influence the management of the social and economic affairs of Ireland.

The ***Programme for National Recovery*** was designed to improve social equity and overcome the serious economic, employment and fiscal difficulties that characterized the Irish economy.

The **Programme for Economic and Social Progress** provided for social cohesion to address the problem of long-term employment, macro economic stability geared to low inflation, low interest rates, reduction of national debt, tax reform, social services reform, employment and training, agricultural development, labour, company and related legislative reform.

The **Programme for Competitiveness and Work** addressed key challenges to increase employment and reduce unemployment, continued commitment to macro-economic stability, tax reform, social equity and developing the partnership approach.

The **Partnership 2000 for Inclusion, Employment and Competitiveness** provided for greater social inclusion/social equity and, building on the foundation of the earlier agreements, sought to modernize the public sector and to widen and deepen the partnership approach.

The **Programme for Prosperity and Fairness** aims to:

- . • maintain a competitive, dynamic economy;
- . • provide a strong basis for further economic prosperity;
- . • improve the quality of life and living standards;
- . • create a fairer and more inclusive country; and
- . • create full employment and the elimination of unemployment. These are based on: -equal opportunity; -lifelong learning; -adaptation to the information society; -promotion of research and development; -balanced and sustainable national development; -an entrepreneurial culture; and -playing its full part in the European Union and the international

community.

The **Programme of Prosperity and Fairness** also consists of five operational frameworks:

- . • Living standards and workplace environment;
- . • Prosperity and economic inclusion;
- . • Social inclusion and equality;
- . • Successful adaptation to continuing change; and
- . • Renewing partnership.

“Social partnership in Ireland at the national level was initiated in 1987 and was born out of the serious economic, social and fiscal problems affecting the Irish economy ...” In ten (10) years of social partnership, Ireland’s social partners have transformed a struggling debt-ridden economy to one of singular success with record high levels of growth, employment creation, and industrial peace.”

BARBADOS

National Protocols

The economic difficulties in the early nineties propelled Barbados into a social partnership arrangement, drawing from the Irish model and experience. Representatives of Government, Barbados Employers’ Confederation (BEC) and the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB) over the years negotiated the following national agreements which continue to impact positively on the socio-economic

life of the country and enjoy broad-based support:

- . • *Protocol for the Implementation of Prices and Incomes Policy: 1993-1994.*
- . • *Protocol for the Implementation of a Prices and Incomes Policy: 1995-1997.*
- . • *Protocol three for the Implementation of a Social Partnership: 1998-2000.*
- . • *Protocol four of the Social Partnership: 2001-2002.*
- . • *Protocol five of the Social Partnership: 2005-2007.*

These protocols were premised on certain principles, values, and commitments by the Government and social partners including:

- . • fostering and maintaining good labour – management relations;
- . • social dialogue through tripartism;
- . • commitment to ILO standards;
- . • prices and incomes policy and maintaining the parity of the Barbados dollar;
- . • sustained economic growth, a restructured economy and increased production;
- . • wage and price freeze (first protocol), and wages restraint (second protocol);

⁷Kieran Mulvey, Chief Executive, Irish Labour Relations Commission states in an address presented to the 11th World Congress of the International Industrial Relations Association in Bologna, Italy, 1998.

- . • implementation and oversight of the protocols by a main committee under the chairmanship of the Prime Minister (third Protocol) as well as sub-committees;
- . • employment, training, social equity, public sector reform, social problems and social inclusion; and
- . • the individual and collective responsibilities of the Government, employers' representatives and employees' representatives.

To a large extent, as a result of these protocols, Barbados achieved lower inflation, reduced fiscal deficits, increased foreign investment, and increased foreign reserves.⁸

Continuing to build and expand on the first four Protocols in the fifth Protocol of the Social Partnership, the social partners agreed on a wide range of policy measures and actions intended to:

1. 1. create a modern, efficient economy which is able to produce high and sustainable growth accompanied by increased employment and well-being;
2. 2. establish through low inflation, an equilibrium between prices and incomes;
3. 3. achieve a society which enjoys a greater degree of inclusiveness; and
4. 4. distribute the benefits of economic growth fairly and equitably.

This Protocol addresses *inter alia*, globalization, the CARICOM Single Market and Economy, the national economy, the public sector, employment, human resource development, persons with disability, child labour, migrant workers, employment relations, prices and incomes policy, productivity, wealth creation and poverty eradication, social dialogue, and commitments by government, employers' representatives and workers' representatives.

Other initiatives for social partnership

Other Caribbean countries have taken some positive initiatives and agreed in principle to

forged national consensus on social and economic matters as follows:

⁸ Evelyn Greaves: "Social dialogue in selected countries in the Caribbean: An Overview" in *Trade Unions and Social Dialogue: current situation and outlook. Labour Education 2000/3 No. 120*

TRINIDAD AND TOBAGO

Compact 2000 and Beyond: Declaration of the Social Partners to address Economic and Social Issues: October 2000.

The Prime Minister of Trinidad and Tobago, the President of the National Trade Union Centre (NATUC), the Chairman of the Employers' Consultative Association (ECA) and their representatives signed this Agreement on 31 October 2000.

Compact 2000 is essentially an agreement committing the parties to enter into serious social dialogue to develop national protocols.

Compact 2000, among other ideals recognizes:

- . • the need to improve the conduct of labour-management relations;
- . • the potential of tripartism in the social dialogue process;
- . • the need for increased investment and rapid economic growth and development, a stable currency and international competitiveness;
- . • the joint stake, mutual interest, and responsibility of the social partners for national development; and
- . • the need to promote a stable social climate and human and social protection.

Progress and follow-up actions on the commitments of the Government and the social partners are still to be made. Further negotiations have not taken place since *Compact 2000* was signed, given the context of the political situation. During this period, there were two general elections and a change in Government in December 2001, followed by a continuing political and parliamentary impasse, with still no functioning parliament at the beginning of April 2002.

The situation is also compounded by the division in the trade union movement and the lack of support by a significant section of the labour movement. The vision and the commitment of *Compact 2000* can only be achieved through broad-based support of Government, the political parties, trade unions, the private sector and the wider community.

In 2003-2004, the Government established several committees to articulate visions for the future. Its *Vision 2020* (October 2003), on *labour and social security*, foresees adequate social protection for all to enable a decent standard of living from the 'cradle to the grave'; full and sustainable employment and the development of the full human potential; and a harmonious industrial relations environment in line with fundamental principles and rights at work.

Interest in national dialogue has motivated an influential, broad-based group in civil society to articulate ***The Principles of Fairness*** (2005) for constructive engagement in promoting these Principles. It is proffered that *The Principles of Fairness* provide the bases for a more just society, eliminating discrimination in *employment; education, health,*

and security; access to facilities provided including the supply of goods and services; state development and poverty relief programmes; allocation of housing; and the award of contracts, concessions or licences.

JAMAICA

Draft Agreement for National Economic and Social Understanding

The Social Partnership Secretariat in Jamaica in September 1996, prepared a *Draft Agreement for the Implementation of a National Economic and Social Understanding: Social Partnership 1996-997*,

commonly referred to as the “social contract.” This agreement drafted before consultations with the Jamaica Employers’ Federation (JEF) and the Jamaica Confederation of Trade Unions (JCTU), was presented to Parliament by the People’s National Party (PNP) Government. The Jamaica Labour Party (JLP) parliamentary opposition and the representatives of the social partners declined to lend their support and endorsement to the draft agreement. National consensus was therefore not achieved.

The draft agreement was premised on the need to adopt appropriate measures and actions as a matter of national priority to:

- . • raise general living standards;
- . • accelerate savings, investments and economic growth;
- . • create greater employment opportunities;

- . • ensure price stability and international competitiveness;
- . • increase export of goods and services;
- . • achieve social and economic stability;
- . • attract local and foreign investors;
- . • reduce the rate of inflation;
- . • stabilize the macro-economic environment;
- . • increase employment, productivity and efficiency;
- . • reform the labour market and industrial relations; and
- . • reduce poverty.

. Although the JCTU did not accept the draft agreement, it committed itself to the principle of social partnership, and pursued bi-lateral and tripartite discussions with the following major industries, resulting in the signing of Memoranda of Understanding (MOU) with each of the following industries:

- . • Bauxite;
- . • Banana;
- . • Water;
- . • Shipping; and
- . • Public Services

. These memoranda were entered into in 1998, committing the parties to pursue strategies designed to achieve fundamental transformation in employment relations and to establish a framework for greater consensus among the social partners at the enterprise level. The Memoranda dealt with a range of issues including:

- . • corporate social responsibility;
- . • personnel training and development;
- . • increased productivity;
- . • new investment in the industry;
- . • international competitiveness;

- . • disclosure of information; and
- . • negotiations based on productivity gains.

These have impacted positively on the Bauxite industry in particular where the first steps were initiated in 1995 and concluded with the 1998 signing of the agreement. This was achieved as a result of determination, leadership and the cultivation of trust, given the reality of the Jamaican workplace culture. The Memoranda of Understanding are an encouraging move in a long process to change the industrial relations culture in Jamaica at the enterprise level against the background of continuing economic difficulties and the global realities. The Memoranda of Understanding process seems to be the route major industries and enterprises will pursue with the trade unions as being achievable and feasible in the Jamaican social and political context.

It is acknowledged that the Memoranda of Understanding emerged in response to the need at the bi-partite level to:

- . • chart a new course of co-operation;
- . • engender and build confidence and high trust;
- . • promote a more conducive industrial relations climate;
- . • ensure the viability and profitability of enterprises;
- . • provide better services;
- . • upgrade and develop the human resources; and
- . • secure the full commitment and political will of Government and the social partners to move to the level of national tripartite agreements/protocols.

In February 2004, representatives of the Government of Jamaica and the Jamaica Confederation of Trade Unions entered into a *Memorandum of Understanding for the Public Sector* in the national interest. The public sector embraces central and local government, and all other Government entities, commissions, companies, corporations, institutions, and statutory bodies. The aim is to address the prevailing high debt in relation to the GDP, fiscal deficit, low economic growth, and low employment creation in a combined effort by the parties to restore national economic growth. The parties recognize the need for improved labour-management relations, and the pursuance of policies and strategies for sustained growth and development of the public sector in particular, and the country in general, and accordingly agreed on a general policy of:

- . • wage restraint in the public sector for the period 1 April to 31 March 2006;
- . • employment constraint with certain exceptions; and
- . • expenditure restraint.

The Memorandum also requires the Government to pursue complementary fiscal and monetary policies to sustain real economic growth over the medium to long term. The parties are further committed to the development of a modern, efficient public sector, adequately staffed, properly equipped, and suitably rewarded.

GRENADA

Memorandum of Understanding

This Memorandum was signed on the 17 November 1998 by the Prime Minister and representatives of the Trade Union Movement, the Private Sector and the NGO community.

The Memorandum provides for the:

- . • commitment of the parties to consult and to achieve consensus on national development;
- . • establishment of the National Tripartite Consultation Committee of the social partners;
- . • the national tripartite committee to elaborate on a vision for national development;
- . • review and assessment of the state of the economy and the social sectors; and
- . • identification of policies and programmes aimed at achieving national development in line with the articulated vision.

SURINAME

Joint Declaration – Management and Labour

The representatives of the Employers' Organization (VSB) and the Trade Unions, committed themselves in June 1999, to this Declaration which recognizes the need for constructive engagement and collaboration by the social partners to deal with socio-economic issues. The Declaration asserts that:

- . • successful private sector businesses contribute to the general welfare and advancement of enterprises and workers;
- . • positive measures are needed to rehabilitate private enterprises through improved productivity;
- . • good labour-management cooperation and mutual trust are required to build the economy;
- . • the free exchange of views for improved labour-management relations is essential; and
- the basic rights and duties must be respected.

This is again just the beginning and can succeed with the commitment and high trust of the social partners and the political will of the Government.

In 2002, the Government established a high level National Tripartite Consultative Body comprising of six Ministers, and six representatives each of trade unions and employers' organizations to consider policy matters. In 2004, the National Assembly, by legislation, established a national, tripartite Social and Economic Council (SER) to advise the government on macro-economic and social issues through dialogue and consensus. The objectives are to promote social peace and stability, social justice and economic growth.

CURACAO

Vishon Korsou

Independent social groups/foundations, the social partners, and the Government of Curacao are seeking to jointly develop social partnership and to create synergy among the social partners. The goal is to arrest the economic and social decline, reduce unemployment and create new employment opportunities. The group articulated a *vision for Curacao by 2020* in which the Island will have: ⁹

- an educational system that enables each person to achieve his/ her maximum potential and continuous upgrading to meet the requirements of civic responsibility and a modern, healthy, technological, global community;
- a sustainable export-oriented economy, based on an attractive investment climate and providing adequate job opportunities for the local labour force;
- a quality of life with a social and spiritual conscience, a respectable living and natural environment and a unified concern for community enhancement;

**Vishon Korsou (September 1999)*

- an efficient, effective and accountable government that provides basic services to the community and creates the right conditions for healthy socio-economic development;
- a private sector leadership that guards the well-being of the community, takes initiative for positive development, adheres to high ethical standards where everyone takes responsibility for his or her actions;
- an infrastructure that supports socio- economic development and education while enhancing quality of life and environment; and
- a globally-competitive information and communication technology that is accessible and safe for citizens, business, government and non-profit organizations.

Core Values

The core values, which will guide citizens and the community as they pursue interdependent visions and strategies, include:

Responsibility, Integrity, Faith in God, Positive Attitudes, Productivity, Family Values, Leadership, and Perseverance.

Ten Priority Issues

The following priority issues are to be addressed in the *vision process*: *Education, Economic Development, Quality of Life, Government/ Governance, Human Resource Development, Norms and Values, Social Problems, Culture, Patriotism, and Leadership.*

Key Benchmarks

Key benchmarks were set to measure the vision's progress each year to 2020, and for each benchmark, a yearly target is being set until 2020 in the following areas:

- *New Job Growth, Increased Gross Domestic Product(GDP), Income Growth, Skilled workforce, and Improved Quality of Life.*

National discussions are ongoing among the social partners and the Government to secure the continued political and corporate commitment to strengthen the implementation of measures to achieve the goals of the vision statement, its annual review and target-setting.

Protocol on Social Dialogue

In June 2003, representatives of labour, government and business signed a Protocol for the promotion of social dialogue with the following on-going agenda:

- development of a tripartite structure for social dialogue in Curacao;
- development of a stable industrial relations climate;
- expansion of the economy through its international competitiveness
- reduction of social disparities through increased employment;
- national commitment towards increased productivity through increased

investments;

- . • national commitment to create a mindset for competitive productivity and change;
- . • national commitment to a flexible, social and economic climate;
- . • transparency and flexibility of all markets: -capital/financial -labour -production -distribution;
- . • maintenance of parity of the rate of exchange; and
- . • national commitment to take measures to reduce drugs, corruption and crime.

GUYANA

Tripartism and Draft Protocol for Social Partnership

In January 1993, Guyana established a national tripartite committee comprising of 18 members – 6 from each of the social partners under the Chairmanship of the Minister of Labour to deal with a national labour policy. The committee established 6 sub-committees with two nominees from each of the social partners on each sub-committee. The Chairs of the sub-committees were drawn from the main committee, two from each of the social partners as follows:

- . • Minimum wage and legislation Government representative as the Chair
- . • Industrial disputes Labour representative as the Chair

ILO's support of Social Dialogue in Guyana

Given its commitment to national tripartism, the ILO, in collaboration with the social partners in Guyana, sponsored a sub-regional *Labour Administration and Social Partnership Seminar* in August 1998. The social partnership element of the seminar, which was tripartite for Guyana, was addressed by the Minister of Labour, the Executive Director of Consultative Association of Guyanese Industries (CAGI) and a representative of the Guyana Trades Unions Congress (GTUC). They all expressed interest and commitment to the principle of social partnership and a revitalized process of dialogue.

This event was followed up in November 1998 when the ILO, in collaboration with the social partners, sponsored two national tripartite fora on *Social Partnership* based on the experiences of Ireland and Barbados. Another forum was held in April 2000 involving the GTUC, the Caribbean Centre for Development Administration (CARICAD), and the ILO Caribbean Office, principally to raise awareness of the concept of a *social contract* and its potential for national development. This resulted in GTUC officials preparing a: *Draft First Protocol for the Implementation of a Social Partnership 2000*. The document was modelled after the Barbados Social Partnership Protocols, and covers several areas, including:

- . • social dialogue through tripartism;
- . • the concept of good governance for social and political stability;
- . • the promotion of improved industrial relations;
- . • national development issues including human and social development, social protection, restructuring of the economy, improved productivity, stable currency, investment, and employment matters.

The draft was sent to the government officials for consideration, while CAGI and the GTUC continued to hold discussions on the draft to arrive at a consensus, to be followed by discussions with government officials. However, given the conflictual relationships, public positions and political actions of individual trade union leaders, mutual mistrust, intense political controversies, the political-ethnic factor, industrial politics, and trade union affiliation to political parties, it has been an enormous challenge to negotiate/ mediate a national social contract along the lines of the Barbados model.

- . • ILO matters Labour representative as the Chair
- . • Social services Government representative as the Chair

- . • Occupational Safety and Health Employers' representative as the Chair
 - . • Training and Placement Employers' representative as the Chair
- The success and achievements of these sub- committees depend on the commitment of all members. Their potential to influence national labour policy is ever present, and they have achieved some notable success in the following enactments, based on CARICOM/ ILO model laws:
- . • Termination of Employment and Severance Pay Act No. 19 of 1997;
 - . • Prevention of Discrimination Act No. 26 of 1997;
 - . • Occupational Health and Safety Act No. 32 of 1997; and
 - . • Trade Union Recognition Act No 33 of 1997.

It is at the Committee level where the influence of the social partners can be exercised in national policy formulation. The use of the committee forum should therefore be maximized to develop social partnership agreements. This can be achieved with determination, leadership, vision, high trust, commitment, political will and political stability.

But there were intense political controversies since the end of 1997 and two general elections. There were street protests and demonstrations allegedly over the conduct of national elections, and over certain government decisions. These resulted in political and racial violence and destruction by fire of substantial private and public properties in the capital city, Georgetown. The climate was obviously not conducive to consensus-building.

However, the situation changed from the latter half of 2001 with the commencement of national political dialogue and constructive engagement between the opposing parties. This should also renew the prospects for reviving the discussions on the social partnership agreement.

THE BAHAMAS

Tripartite Forum - TRIFOR

Motivated by its commitment to tripartism, the Ministry of Labour in 2000 resolved to rekindle efforts to promote national social dialogue among the social partners, in an exercise of participatory democracy. The objective was to provide a national tripartite forum to enable the social partners and civil society to discuss and debate national issues on a regular basis to:

- . • achieve improved labour relations through meaningful dialogue in a climate of integrity, commitment, trust and mutual respect;
- . • foster greater understanding between labour and management for a more equitable distribution of rewards of efforts in the workplace;
- . • promote the goal of progress at the company and national levels to improve productivity; and
- . • realize the potential contribution of social dialogue to national development.

This tripartite forum, called TRIFOR, has since started to operate.

ST. VINCENT & THE GRENADINES

The incoming Government in 2000, based on its declaration that the time for a social pact and productive social partnership was a strategic imperative to manage globalization, established a broad-base multipartite *national economic and social development council* (NESDC) to provide advice on an on-going basis in genuine consultations, and as an exercise in good governance in the management of the resources of the country.

It has also appointed a *tripartite committee on the economy* to address crisis management, review wages, prices, investment, employment and productivity issues to improve the country's competitiveness. The government has further provided financial resources and personnel to cover the costs to enable the effective functioning of the Council and the Committee. The work of these two bodies continues to inform national social and economic policies.

Challenges for the Caribbean

In the Caribbean context, the exchange of information, consultations, and negotiations in the collective bargaining process, including dispute resolution, and all the dynamics in industrial relations, are regular and routine matters for the social partners. The real challenge is to develop national consensus in the form of social partnership agreements in the interest of the wider national community. Social partnership agreements provide the framework for national strategies to achieve international competitiveness, higher standards of living, and improved social protection, a stable currency, investment-friendly policies and a more development-conducive labour and social climate.

The Caribbean Community (CARICOM) envisions a conducive labour relations climate for economic development and through its *Protocol III on Industrial Policy – Article 49 (b)*, calls for measures and proposals that will promote:

- . • the objectives of full employment, improved living and working conditions, adequate social security policies and programmes, tripartite consultations among governments, workers' and employers' organizations and cross-border mobility of labour.
- . • greater awareness among Community workers and employers that international competitiveness is essential for social and economic development and requires the collaboration of employers and workers for increased production and productivity in enterprises.

CARICOM in its Declaration of Labour and Industrial Relations Principles (April 1995) outlined the general labour and industrial relations policy to which the Caribbean sub-region should aspire. The Declaration is consistent with international labour standards and other international instruments and is an expression of CARICOM's commitment to equity, social justice and fundamental rights and principles at the work place.

The Caribbean faces other urgent and compelling challenges:

- . • the challenge to regional economic integration in the creation of the CARICOM Single Market and Economy;
- . • the challenge to establish new relationships with countries in the Americas under the process leading to free trade of the Americas;
- . • the challenge to forge new relationships with Europe; and

. • the challenge of the global community in the World Trade Organisation (WTO).

These encompass the challenges of global competition, trade liberalization, deregulation and privatization which exert tremendous pressure on established employment and labour relations both in the private and public sectors.

Fiscal deficits, accumulated debt and the need to manage public expenditure and balance the national budget in many countries put pressure on public policy to reform the state sector for greater efficiency. Governments have consequently attempted to stabilize public finances, review fiscal and tax measures, and adopt various policies and strategies to promote economic development and improvement in private sector performance to strengthen their national economies. But a strong national economy can only be sustained in growth if it is built on sound, social and human development pillars.

Small, vulnerable Caribbean economies face the challenge to compete with large and strong economies, and to mediate the process of hemispheric integration - the Free Trade Area of the Americas (FTAA). The Free Trade Area of the Americas forces small, less developed countries to come to grips with the need for increasing competitiveness in the new international environment. These countries must prepare their economies for increasing competition in response to international trends favouring an increasing globalization of production and liberalization of trade. It is critical that these countries strengthen their internal capacity so as to improve their prospects for participation in the FTAA.¹⁰

Many people express concerns over the processes of globalization and the social consequences of trade liberalization referred to as the social dimension of the liberalisation of trade.

*“Globalization has brought prosperity and inequalities, which are testing the limits of collective social responsibility”.*¹¹

These developments have implications for economic, social and

¹⁰ Denise Goolsarran: *The Free Trade Area of the Americas and its implications for smaller and relatively less developed Countries in the Western Hemisphere*, MSc. Thesis, (University of the West Indies, 1999).

¹¹ Juan Somavia: *Decent Work - Report of the Director-General to the International Labour Conference, 87th Session*. (Geneva, 1999)

human development. Effective management of the economy in a climate of good governance with proactive involvement and participation of civil society is crucial for agreeing on measures for a balanced economic and social development.

The State bears responsibility for ensuring that governance as: *“The manner in which power is exercised in the management of a country’s economic and social resources for development”*¹²

reflects fairness and effective social justice.

A State that is committed to such good governance will ensure that there is participation by the social partners, and credibility, transparency, and accountability in its administration and management of national affairs.

The challenges, in terms of national strategies to promote economic growth, and social and human development, call for actions at the national level. It is for the governments, social partners and civil society in the Caribbean countries: -

.(a) to respect, promote and realize in good faith the fundamental principles and rights at work;

.(b) to adopt the social partnership option in the management of change in socio-economic affairs through sustained national dialogue which must be promoted in a paradigm shift - from the traditional confrontational posture to one which cultivates consensus and cooperation.

¹²*Webster's Dictionary*

PART II:

National Labour Legislation: Selected Provisions

1.1.1.1.1. Trinidad and TobagoTrinidad and TobagoTrinidad and TobagoTrinidad and TobagoTrinidad and Tobago

Industrial Relations Act 88:01 – July 1972

The Industrial Relations Act (IRA) was enacted to repeal and replace the Industrial Stabilization Act 1965, and to make better provisions for the stabilization, improvement and promotion of industrial relations.

Power of the Minister (Sec. 3) The Minister may delegate to any officer within the Ministry of Labour any of the Minister's powers or functions under the Industrial Relations Act except this power of delegation.

Industrial Court (Part 1, Sec. 4)

- . • The Industrial Court is a superior court of record and has all the powers inherent in such a Court.
- . • The Court consists of two divisions, each consisting of a Chairman and at least two other members:
 - . (1) The General Services Division has and exercises jurisdiction for services other than essential services.
 - . (2) The Essential Services Division has and exercises jurisdiction over essential services.
- . • Both Divisions have jurisdiction: -to hear and determine trade disputes; -to register collective agreements and to hear and determine
 - matters relating to the registration of such agreements;
 - to enjoin a trade union or other organization or workers or other persons or an employer from taking or continuing industrial action;
 - to hear and determine proceedings for industrial relations offences; and
 - to hear and determine any other matter brought before it (Section 7(1)).
- The Essential Services Division has and exercises jurisdiction over the following essential services: --Electricity (generation, transmission and distribution) -Water and Sewerage -Internal telephone -External communications (telephone, telegraph, wireless) -Fire -Health -Hospital -Sanitation (including scavenging) -Public school bus -Civil aviation (including all services provided by commercial airlines)

The Special Tribunal established by the Civil Service Act (Ch.23.1), which consists of the Chairman of the Essential Services Division of the Industrial Court and two other members of that Division selected by the Chairman, hears and determines disputes arising in the civil service, the police, fire, prison and teaching services, the supplemental police service and the Central Bank, as if those disputes arose in the essential services.

The Composition of the Industrial Court

The Court consists of the following members appointed by the President of Trinidad and Tobago:-

- . • A President who is a Judge of the Supreme Court of Judicature designated or a person who has the qualification to be appointed a Judge of the Supreme Court;
- . • A Vice-President of the Court, an attorney-at law of not less than ten (10) years standing;
- . • Chairman of the Essential Services Division;
- . • Such other members as may be determined and appointed by the President of Trinidad and Tobago from among persons experienced in industrial relations or qualified as economists or

accountants, or who are attorneys at law of not less than five (5) years standing.

The Registrar and other officers of the Court are public officers (Section 6).

Rules of Evidence (Sec. 9) In the hearing and determination of any matter, the Court may act without regard to technicalities and legal form and is not bound to follow the rules of evidence. However, the Court may inform itself on any matter as it thinks just and may take into account *opinion evidence* and such facts as it considers relevant and material.

Powers of the Court (Sec. 10)

- The Court may, in relation to any matter before it:-
 - refer the matter back to the parties or the Minister for further consideration with a view to settling or reducing the several issues in dispute;
 - make an order or award (including a provisional or interim order or award) or give directions; -award compensation on complaints brought and proved before it by a party for non-observance of an order or award;
 - dismiss any matter or part of a matter or refrain from hearing or from determining the matter if it considers the matter trivial, or if it considers that further proceedings are unnecessary or undesirable in the public interest.
- The Court, in exercising its powers, shall:-
 - make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole.
 - act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.
- The Court may, in any dispute concerning the dismissal of a worker, order the re-employment or re-instatement (in the former or similar position) of any worker, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages.
- The Court takes this course of action, if in its opinion, a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice. Action of the Court in these circumstances “shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever”.

Appeal on Point of Law (Sec. 18)

- An Appeal on a point of law can be made to the Court of Appeal on the grounds that: -the Court had no jurisdiction; -the Court exceeded its jurisdiction; -the order or award has been obtained by fraud; -the decision is erroneous in point of law; or -there is some other specific illegality substantially affecting the merits of the matter.

• An order or award or any finding or any decision of the Court shall not be:-challenged, appealed against, reviewed, questioned or

called into question in any Court on any account; and -subject to prohibition, mandamus or injunction in any Court.

Settlement by Conciliation (Sec. 12)

The Court may also attempt to promote a settlement of a dispute through the conciliation process.

Court Procedure (Sec. 13)

The Court, by rules, regulates its own practice and procedures for the hearing and determination of all matters.

Binding Order of the Court (Sec. 19)

An order or award of the Court shall be binding on:-

- . • all parties to the dispute who appear or are represented before the Court;
- . • all persons summoned to appear as parties to the dispute;
- . • in the case of employers, any successor or relevant party to the business;
- . • any trade union on whom an order or award is declared by the

Court to be binding as well as on its successors; and

- . • all workers belonging to a bargaining unit to which such an order or award refers.

Intervention by the Attorney General (Sec. 20)

It is open to the Attorney General to submit that the Court consider additionally and be guided by the following considerations:-

- . • the necessity to maintain and expand the level of employment;
- . • the necessity to ensure workers a fair share of increases in productivity in enterprises;
- . • the necessity for the establishment and maintenance of reasonable differentials in rewards between different categories of skills;
- . • the necessity to maintain and improve the standard of living of workers;
- . • the necessity to preserve and promote the competitive position of products of Trinidad and Tobago in the domestic market as well as in overseas markets; and
- . • the need to ensure the continued ability of the Government of Trinidad and Tobago to finance development programmes in the public sector. By Sec. 21(6) of Chapter 23:01 – the Special Tribunal, in its judgement, is to be guided by the same consideration as set out in Sec. 20 of the IRA.

Trade Union Registration, Recognition and Certification Board

(Part II, Sec. 21)

- . • The Registration, Recognition and Certification Board (The Board) consists of a Chairman and eight other members. The Chairman, a fit and proper person, *is selected by the President of Trinidad and Tobago* after consultation with the most representative workers' and employers' organizations and appointed by the Minister. The other members are also *appointed by the Minister*, as follows:--*three members* nominated by the most representative workers' organization; *-three members* nominated by the most representative employers' organization; *-two members jointly nominated* by the most representative organizations of workers' and employers'.
- . • The Minister, in like manner, appoints alternate members (Sec. 21(41)).
- . • The Secretary and other officers of the Board are public officers (Sec. 22).

Duties of the Board (Sec. 23 (11))

The Board is charged with responsibility for:-

- . • determination of all applications, petitions and matters concerning certification of recognition;
- . • certification of *recognized majority unions*;
- . • the recording of the certification of recognized majority unions;
- . • making agency shop order and the conduct of ballots and proceedings in connection with *agency shop*;
- . • the cancellation of certification of recognition of trade unions; and
- other matters assigned to it by the Minister under this Act or any other written law.

Certification of Recognition (Part III , Sec. 32)

- . • The Board is required to determine expeditiously all applications for certification in accordance with this Act.
- . • Applications by trade unions to obtain certification of recognition shall be submitted to the board in writing on the prescribed form. A description must be given by the Union of the proposed bargaining unit in respect of which certification is sought. The Union (claimant union) must also serve a copy of the application on the employer and the Minister.
- . • The Board's determinations of applications for certification of recognition, as well as the determinations of the appropriateness of a bargaining unit shall be final for all purposes.

Appropriateness of a Bargaining Unit (Sec. 33)

The Board first determines the appropriateness of a proposed bargaining unit, and in so doing, the Board takes into consideration:-

- . • the community of interest among the workers in the proposed bargaining unit, including the work locations and the method and periodicity of payment;
- . • the nature and scope of the duties exercised by workers;
- . • the views of the employer and trade union concerned as to the appropriateness of the bargaining unit;
- . • the historical development, if any, of collective bargaining in the industry or business; and
- . • any other matter the Board considers to be conducive to good industrial relations.

Recognized Majority Union (Sec. 34)

- . • The Board certifies as the *recognized majority* union that trade union which it is satisfied has, on the *relevant date*¹⁴, *more than fifty percent* of the workers comprised in the appropriate bargaining unit as members in good standing.
- . • Where it appears to the Board that more than one union has more than fifty percent of members in good standing in an appropriate bargaining unit, the Board shall certify as the recognized majority union, that union which *secures more than fifty percent support* of the workers determined by a *preferential ballot*.

Effect of Certification (Sec. 35)

Where a trade union is certified as the recognized majority union, such a trade union:-

- . • *replaces* any other trade union which was the recognized majority union;
- . • *has exclusive authority to bargain collectively* on behalf of workers in the bargaining unit; and
- . • *is substituted as a party* to the agreement in place of the union that was a party to the agreement.

.Issuance and Contents of Certificate (Sec. 37) The Board shall issue to the union and the employer, in every case in which it certifies a trade union as the recognized majority union, a certificate under its seal, with the following particulars:-

- . • the name of the employer and the trade union which is certified;
- . • the category or categories of employees comprised in the bargaining unit;
- . • the number of workers comprised in the bargaining unit at the

relevant date; and • other relevant matters.

"The "relevant date" means such date as the Board considers appropriate.

Application for Certification - when entertained (Sec. 38) Applications for certification of recognition are not entertained or proceeded with where:-

- . • there is a recognized majority union for the same or part of the same bargaining unit described in the application;
- . • the application is made earlier than two years from the date on which the recognized majority union obtained certification, unless granted leave by the Court for good reasons to make the application earlier;
- . • the application relates to workers in a bargaining unit in one category of essential industries and the claimant union is already certified as the recognized majority union for workers in a bargaining unit in another category of essential industries. Where, however, the claimant union is already certified as the recognized majority union for workers in bargaining units in more than one category of essential industries, this requirement does not apply if the application relates to workers in a bargaining unit in any of those categories of essential industries for which the claimant union is already so certified; and where
- . • an application is made earlier than six months for the same or part of the same bargaining unit as was last determined or from the date when its certificate of recognition was cancelled.

The *essential industries* (categories) as listed in the first schedule are:-electricity service (generation, transmission and distribution); -water and sewerage services; -fire service; -health services; -hospital services; -sanitation services; -oil, gas, petrochemicals; -port operations; -sugar; -communication, internal and external; -civil aviation services; and -public bus transport service.

Compulsory Recognition and Duty to Treat (Sec. 40)

- . • The employer shall recognize that trade union certified as the recognized majority union by the Board.
- . • The recognized majority union and the employer shall, subject to this Act, *in good faith, treat and enter into negotiations* with each other for the purposes of collective bargaining.
- . • Where either party fails to comply with this section it shall be guilty of an *industrial relations offence* and liable to a fine of four thousand dollars.

No Victimization for Trade Union Activities (Sec. 42)

- A worker shall not be victimized by an employer in any way for trade union activities where a worker:--is an officer, delegate or member of a trade union; -is entitled to a benefit of an order or award under this Act; -has appeared as a witness or has given evidence in a proceeding under this Act; or
 - has absented himself from work without leave to carry out his/her duties as an officer or delegate of a trade union and the leave has been unreasonably refused or withheld.
- An employer shall not:--make employment of a worker subject to not joining a union or relinquishing trade union membership; -dismiss or otherwise prejudice a worker for any involvement in or for any trade union activity outside working hours;
 - seek to influence a worker's trade union activities by threatening to dismiss or to adversely affect his/her employment.
- .
 - An employer who contravenes this Section 42 is liable on summary conviction by a Magistrate to a fine of ten thousand dollars and to imprisonment for one year, in addition to compensation and redress to the affected worker.

Collective Agreement (Part IV, Sec. 43)

- A collective agreement shall:--contain effective representation procedures for the avoidance and settlement of disputes;
 - normally be for a term not less than three years or more than five years;
- contain a provision for the settlement of all differences between the parties on interpretation, application, administration, or alleged violation of the agreement. These procedures remain in force and effect until another agreement is registered (Sec. 48 (2)).
- The following terms in any collective agreements are void:--any provision that any benefits under the agreement are to apply only to members of a particular union; -any clause excluding or limiting the application of this Act or the agreement; or
 - any clause specifying that the employer must employ only members of a particular union or must show preference or favour regarding recruitment, offer of employment, retrenchment or termination of employment, only to members of a particular union.

Notice of Negotiations and Actions by the Minister (Sec. 44-45)

- .
 - A recognized majority union or employer initiating negotiation of a collective agreement is required to send to the Minister particulars on all items to be negotiated.
 - Upon the parties reaching agreement, the collective agreement shall be transmitted to the Minister together with a request from any of the parties for the registration of the agreement by the Court.
 - The Minister considers the Agreement and whether or not the Minister objects to its registration he/she shall, within fourteen days, submit the Agreement to the Court for registration.
 - Where the Minister objects to the registration of the Agreement, the Minister is required to submit at the same time, a statement of his objections and any other

appropriate observation and serve a copy on the concerned union and employer.

- Where the agreement is not submitted as required, either party may submit the agreement to the Court for its registration.

- The Minister may object to the registration of a collective agreement:--for non-compliance in providing for procedures for the

avoidance and settlement of disputes; -where there is a pending application for certification affecting the bargaining unit in whole or in part to which the collective agreement relates;

-when there is a pending petition before the Board for a variation of the bargaining unit to which the collective agreement relates.

Registration of Collective Agreement by the Court (Sec. 46)

- The Court, with respect to a Collective Agreement, may:--register or refuse to register the agreement; -with the consent of the parties register the agreement with such amendments or modifications, as it may consider necessary and proper;

-subject to such terms and conditions, refer it back to the parties for further negotiations on matters on which there was a refusal to register; or

- register the agreement with such modifications as the Court may think just upon failure to reach agreement by further negotiations on matters referred back to the parties.

- The Court may refuse to register the agreement: -on its own motion; -upholding any of the Minister's objections; -if there is a conflict with any provision of the Constitution, this Act, or any other law; -where there is in force a registered agreement relating to part of or the same bargaining unit.

- Upon registration of a collective agreement, the Court is required to submit, within seven days, a copy of the registered agreement to the Minister and the concerned parties.

Enforceability of Registered Agreements (Sec. 47)

- The terms and conditions of a *registered agreement* are binding on the parties and are *directly enforceable by the Court*.

- Where applicable, the terms and conditions are deemed to be terms and conditions of individual contracts of employment of workers in the relevant bargaining unit.

- Registration of a collective agreement shall be deemed to constitute actual notice of all the provisions.

Parties to a Registered Agreement (Sec. 48)

The following are deemed to be the parties to a registered agreement:-

- the recognized majority union;
- the employer who is a party to the registered agreement;
- any successors to, or assignees of such employer or recognized majority union as the case may be.

Disputes Procedure (Part V, Sec. 51)

- Any *unresolved trade dispute* may be reported to the Minister only by:--the employer; -the recognized majority union; -where there is no recognized majority union, *any trade union*, of which the workers who are parties to the dispute are members in good standing.
 - All disputes in the *essential services* shall be reported to the Minister by the parties concerned, within six months of the date of the issue giving rise to the dispute. The Minister may extend the time during which a dispute may be so reported.

Power of the Minister on a Report (Sec. 53)

Where a dispute is reported to the Minister, the Minister may:-

- request further particulars;
- refer the dispute back to the parties if they have not exhausted their own suitable procedures.

Action on Report by the Minister (Sec. 55)

- The Minister shall take such steps as may be considered advisable to secure a settlement of the disputes by *means of conciliation* within fourteen days after the date of the report.
- Where the Minister is satisfied that the conciliation process will not resolve the dispute or where either party refuses to enter into conciliation in good faith, the Minister may *certify that the dispute is an unresolved dispute*.

Intervention by the Minister (Sec. 56) The Minister may intervene in any dispute at any time before a report is made or deemed to be made in order to advise the parties and/or conciliate with a view to settlement, if necessary.

Resolved Disputes (Sec. 58)

- Where a dispute has been resolved either before or after conciliation by the Minister, the parties sign a memorandum of agreement setting out the terms of agreement. Either party may present and request the Minister to forward the agreement to the Court.
- Upon receipt of the memorandum of agreement, the Registrar shall enter the memorandum of agreement as if it was an order or award of the Court.

Unresolved Disputes (Sec. 59)

- Where the unresolved dispute concerns the application to any worker of existing terms and conditions of employment and other employment-related matters, either party to the dispute may make application to the Court or the Minister may refer the matter to the Court for determination. These matters include employment, dismissal, non-employment, re-employment or reinstatement.
- Where the unresolved dispute is between the employer and the recognized majority union concerning other matters than those listed above, the dispute may be dealt with in the following manner:--at the request of both parties, the Minister may refer the

- dispute to the Court for determination;
- either or both parties may, subject to this Act, take action by way of strike or lockout, subject to the following conditions: -only the recognized majority union is permitted to pursue strike action; -an employer is not permitted to lockout workers who are not represented by a recognized majority union;
- strikes or lockouts are not permitted in the case of unresolved disputes in

essential services. The Minister is required to refer every unresolved dispute in the essential services to the Court for settlement.

Strike Notice or Lockout Procedures (Sec. 60)

- Subject to limitations of Section 59, where there is an unresolved dispute between the employer and the recognized majority union, the employer or the recognized majority union may take lockout or strike action.
 - In the event that an employer or recognized majority union intends to take any action, *lockout notice or strike notice* shall be given to the other party and to the Minister.
 - No such lockout, or strike action may be taken before the date on which the Minister is required to certify (Section 59) that the dispute is an unresolved dispute.
 - No such action may be taken:--later than *seven days* after the date on which the Minister is required to certify the dispute unresolved;
- after both parties have requested the Minister to refer the dispute to the Court.

Reference to the Court (Sec. 61)

The Minister is required to refer an unresolved dispute to the Court:

- where no lockout or strike notice is given;
- where no action has been pursued by either party;
- if after any action was commenced, both parties jointly requested the Minister to refer the unresolved matter to the Court; or
- after three months of continuous industrial action at the request of either party, for final determination.

Action in Conformity with the Act (Sec. 62)

Where any strike action is taken in conformity with the Act, there is no obligation on the part of the employer to pay for any services of a worker that are withheld as a result of strike action.

Stop Order in the National Interest (Sec. 65)

- Where any industrial action is threatened or taken, whether in conformity with this Act or otherwise, and the Minister considers that the *national interest* is threatened or affected, the Minister: -may apply to the Court *ex parte* for an *injunction* restraining the parties from commencing or from continuing the action. The Court may make such order as it considers fit in the national interest.
- The Court may make the following order:--that the parties shall refrain from, or discontinue the industrial action; and -that the matter is properly before the Court for determination.

Industrial Action Prohibited during Hearing (Sec. 66)

- No party to a dispute may continue or take industrial action while proceedings in relation to the said dispute are pending before the Industrial Court or the Court of Appeal.
- No person may take industrial action as a result of dissatisfaction or disagreement with, an order or award of the Industrial Court or the Court of Appeal.

Industrial Action Prohibited in Essential Services (Sec. 67)

- . • An employer or a worker carrying on or engaged in an essential service shall not take industrial action in connection with any such essential service.
- . • An employer, worker, a trade union or other organization, trade union official or any other persons who engages or calls for industrial action to be taken in an essential service or induces or persuades any worker in that service to take such action would be liable on summary conviction to severe penalties in accordance with this section, including:--fine and imprisonment; -cancellation of certificate of recognition by the Board; -disqualified from holding any office in any trade union or other

organization for a period of five years.

Persons Prohibited from taking Industrial Action (Sec. 69)

- . • The following persons are prohibited by the Act from taking industrial action: members of the:--public service; -prison service; -fire service; -teaching service; and -staff and other employees of the Central Bank.
- . • According to Section 68 of the Act, it is *an offence* for persons to contribute or an employer or a trade union or other organization to receive financial assistance to promote or support industrial action.
- . • However, prosecution for any contravention of Section 67-69, can only be instituted by, or with the consent of, the Director of Public Prosecutions.

Agency Shop Orders (Part VI)

• Rights of Workers, Membership and Trade Union Activities (Sec. 71)

Every worker has the following rights:-

- membership in any trade union or any number of trade unions of his/her choice; -not to be a trade union member; -to take part in the activities of the trade union, including the right to seek and hold appointed or elected office.

. • **Agency Shop Orders (Sec. 73)** A recognized majority union may at any time apply to the Board for *an agency shop order* with a copy served on the employer within twenty-four hours of application.

. • **Effect of Agency Shop Order (Sec. 74)** Where the Board makes an Agency Shop Order:--The employer shall comply with the terms and conditions of

the order. -All workers in the relevant bargaining unit for which the union is certified shall pay the sum specified in the order.

-The employer shall deduct the contribution required by the agency shop order, and pay over to the recognized majority union, the union's apportionment of fifty percent of the contribution.

-Any worker in the bargaining unit may, on a prescribed form, authorize the employer to pay to the recognized majority union the whole of the contribution and the employer shall accordingly pay over that amount.

- Where no authorization is given to an employer, the remainder of the contribution i.e. 50% of the full contribution, shall be paid to the Cipriani Labour College or to

the Industrial Relations Charitable Fund as stipulated in writing by the worker. The Fund is for the use of institutions or organizations for the physically and mentally challenged.

Industrial Relations Advisory Committee (Sec. 80-81)

- The Act establishes an Industrial Relations Advisory Committee:--for the purpose of advising the Minister on any matter relating to industrial relations upon the Minister's request;
 - to carry out its duty *to keep this Act under review* to ensure its development and reform and specific proposals to the Minister for amendments and changes.
- The Advisory Committee comprises of a Chairman and such other members as the President of Trinidad and Tobago may determine and appoint as gazetted from among persons representing:--Workers' Organizations; -Employers' Organizations; -Public Officers, and -such other persons as the President considers fit.

Annual Reports (Sec. 83) The President of the Court and the Chairman of the Registration, Recognition and Certification Board shall each submit an annual report to the Minister for presentation to Parliament on their respective work in relation to the Act, or on such other relevant matters, and in particular, the extent to which the objects of this Act have been achieved.

Offences and Penalties

Violation by any party or anyone of any sections of the Industrial Relations Act constitutes an industrial relations offence, and attracts severe penalties of fine or imprisonment as stipulated in its various sections.

Exclusions under the Act (Interpretation 2 (3 & 4))

- For the purpose of this Act, no person shall be regarded as a worker, if that person is:--a public officer; -a member of the defence force; -a member of the teaching service; -a member of the staff and employee of the Central Bank;
- A person, who in the opinion of the Board, is:-
 - responsible for policy formulation in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or
 - has an effective voice in the formulation of policy in any undertaking or business;
 - employed in any capacity of a domestic nature, including that of a chaffeur, gardener or handyman in or about a private dwelling house paid by the householder.
- For the purpose of this Act, the Chief Personnel Officer referred to under Section 13 of the Civil Service Act is deemed to be the employer of any worker employed by the Government.

2. Antigua and Barbuda

Antigua and Barbuda Labour Code

The Antigua and Barbuda Labour Code brings together the legislation applicable to employment, employment standards and industrial relations in a single code for easy reference and legal guidance in the conduct of labour relations.

Employment Protection (C.2)

National public policy requires employers to advise all employees of:

- . • the content of their job descriptions;
- . • their terms and working conditions including *reasonable breaks, a wage which will ensure a minimum standard of living*, reasonable limitation of working hours, premium remuneration for reasonably extended work hours;
- . • maintenance and protection of equity earned beyond periodic wages; and
- . • reason for termination.

Discrimination (C.4)

- . • “No employer shall discriminate with respect to any person’s hire, tenure, wages, hours, or any other conditions of work, by reason of race, colour, creed, sex, age or political beliefs”.
- . • Any personnel action must genuinely relate to an employee’s ability to discharge the duties relating to his/her employment.
- . • Any contravention of this section and summary conviction attracts severe stipulated penalties.

Statement of Working Conditions (C.5)

Employers shall furnish every employee, within ten days of employment, a written statement setting out the:

- . • general responsibilities and related duties for which the employee is being employed;
- . • regular hours of work, rest period, starting pay and methods of computing such pay, duration of employment if not indefinite, probation period, leave and vacation privileges, and *obligations within a bargaining unit of a certified sole bargaining agent*.

Unfair Dismissals (C.56)

- . • At the end of the probationary period with any employer, every employee shall have the right NOT to be *unfairly dismissed* by his employer.
- . • No employer shall dismiss any employee *without just cause*¹³.

Good Cause for Dismissal (C.58; C.59)

A dismissal shall *not be unfair* if the reasons relate to:

- . • *serious misconduct* of the employee on the job where the employer cannot reasonably be expected to take any other course, but termination. Such misconduct includes: -conduct in such a manner as to clearly demonstrate

that the employment relationship cannot reasonably be expected to continue; -the committing of a criminal offense in the course of employment; -immoral behaviour in the course of his/her duties.

Registration of Trade Unions

Eligibility of Bargaining Agent for Registration (H.3) Every trade union or federation of trade unions, which:

- . • is composed of *seven or more members*,
- . • is independent of employers, and

- has the power, without concurrence of any parent organization, to alter any of its own rules, control its own property and funds *shall be eligible for registration*.

¹³ Convention No. 158: Termination of Employment, 1982

Application for Registration (H.4)

- Application for registration *shall be made to the Labour Commissioner* by or on behalf of the bargaining agent seeking registration in such a form and manner as the Labour Commissioner shall require.
- Together with the application, a copy of the rules of the organization and a list of its officers and other relevant information required by the law, shall be furnished.

Trade Union Registration as Bargaining Agent (Registration)

(H.5) Following investigations to ascertain whether the *bargaining agent* is eligible, the Labour Commissioner shall issue a *Certificate of Registration* to the bargaining agent:

- stating whether it is a trade union or an employers' association;
- specifying the name in which the bargaining agent is registered; and
- stating the validity for one year from the date of issuance.

Renewed Registration (H.9) On the anniversary date of each bargaining agent's registration, the Labour Commissioner shall issue a *new Certificate of Registration* valid for a period of one year from the date of issuance.

Cancellation of Registration (H.10)

- The registration of a bargaining agent shall be *cancelled* at the request of the organization, if it is no longer eligible for registration and fails to meet the requirements of law.
- If after investigation and due consideration, the Labour Commissioner believes that the registered bargaining agent is no longer eligible for registration, he shall issue a *Certificate for De-registration*.
- Actions of the Labour Commissioner under this section, after a written request, filed within five days, are reviewed by a *Board of Review* (H.10(10), B.13).

Method of Resolving Representation Question (J.5)

- Whenever there is a timely-raised question as to whether or not a majority of the employees in any *appropriate bargaining unit* wish to be thus represented, the question shall be decided through a *secret ballot* conducted by the Labour Commissioner.
- The *Labour Commissioner's Certificate of the Results* shall constitute a resolution of the question.

Trade Disputes (K.12; K.13)

- Government shall provide the machinery for handling *all trade disputes*.
- All parties to any dispute shall have the benefits of Government services *designed to lead to a voluntary adjustment or settlement*.
- A *major trade dispute*, which has seriously jeopardized or is likely to seriously jeopardize the economy, if not voluntarily adjusted or settled, *shall be resolved by Government services*.

Right to Industrial Action (K: 19 - 20)

Strikes and lockouts are legitimate aspects of the process of free collective bargaining.

This right is protected once exercised in strict conformity with the law (K.19), subject to the following limitations:

- . • The protection under K.19 shall not affect the law relating to riot, unlawful assembly, breach of peace, sedition, or any offence against the country.
- . • No industrial action shall commence or continue:-
 - in any trade dispute among essential services until or *unless the Minister has issued an order that the dispute is not a major trade dispute*;
 - in any other industry, if the Minister has issued an order declaring that the dispute is a major trade dispute;
 - if a trade dispute which has been referred for *formal handling by a decisional officer*, who, under the code (B.6(2) © is *vested with responsibility of hearing and deciding such matters*;
- in protest of a decision any decisional officer or a court rendered under the code; -for recognition as the bargaining agent to replace an existing bargaining agent; -in violation of an existing no-strike or no-lockout commitment;
- to further an action which infringes employee's self-organizational rights without interference from employers; and
- which forces a person to do or abstain from doing any act wrongfully and without legal authority, including:--intimidating a person or his/her family, hiding tools, clothes, or their property, persistently following a person, watching or besetting a person's place of abode, and with others following a person in a disorderly manner.

Essential Services

Water, electricity, hospital, fire, prison, air traffic control, meteorological, International Aeradio Ltd., Government Printing Office, Cable and Wireless (W.I.) Ltd. and Port Authority are essential services(schedule to the Code).

Redundancy/Severance Pay (C.40-41)

- . • Employees with *more than one year aggregate service* with an employer and predecessor employer is entitled to severance pay upon *termination for reasons of redundancy*.
- . • Severance pay shall consist of *at least one day's pay* of the employee's current basic wage, *for each month* or major fraction of the month with his employer and any predecessor – employer.

Overall Responsibility (B.4) The Minister has overall responsibility for the administration of the *Code*, but may delegate authority where the exercise of his/her personal discretion is not required.

Responsibility of the Labour Commissioner (Sec. B.5)

- . • The Labour Commissioner is responsible for the administration of specific provisions of the Code as are assigned, and in addition, as are assigned by the Minister.
- . • The Labour Commissioner also serves as *Executive Secretary for the National Labour Board, and for any Board of Review*.
- . • In addition to other duties, the Labour Commissioner is required to assist in the resolution of any question arising out of employer-employee relationships whether or

not it is provided for under this Code or in line also with the Labour Commissioner's Act, 1951.

- *The Labour Commissioner may conciliate or mediate, or utilize any other device designed to facilitate a voluntary settlement of any dispute.*

- Failing to achieve a voluntary settlement, the Labour Commissioner shall *refer the matter with a full report to the Minister.*

Powers of the Minister (Sec. B.6)

- The Minister shall himself attempt to achieve a *voluntary settlement by taking whatever steps he deems appropriate.*

- Where the Minister fails to achieve a voluntary settlement, the Minister may:
-refer the matter back to the parties for *private negotiations*, or

other machinery established or to be established by them or for the pursuit of legal action; -if applicable, may refer the matter to the proper authority for prosecution;

- refer the matter for formal handling by a *Decisional Officer* who is vested with the responsibility to *hear and decide the matter in an independent manner, or in appropriate cases as required by the Code;*

- refer the matter to be heard by an *Arbitration Tribunal* or *refer the matter to the Industrial Court for determination* (in keeping with the Industrial Court Act).

Powers of Decisional Officers (B.12) A decisional officer is *empowered to impose whatever remedies are considered appropriate* in a matter, in particular *severance pay matters, unfair dismissal or suspension without pay, and an employee-representation matter*, as well as order remedies in keeping with this section of the Code.

National Labour Board (B.7)

- The Code establishes a *National Labour Board (NLB)* which is composed of 12 members: -4 members representing Government; -4 members representing employers; -4 members representing employees.

- The Minister may designate the *Chair* from among the members of the Labour Board.

- The National Labour Board meets in plenary session at least once per year. *The principal responsibility of the NLB is to review the Code and advise the Minister on the need for changes.*

- The deliberations of the NLB on any matter shall be incorporated in a written report with recommendations and reasons for such recommendations to the Minister.

- The NLB also serves as a *Board of Review.*

Arbitration Tribunal (B: 8)

An *Arbitration Tribunal* is created to *hear and determine any major trade dispute*. The Tribunal shall consist of not fewer than seven (7) and not more than eleven (11) members known as *Code Arbitrators*.

- A Code Arbitrator or a *panel of Code Arbitrators*, may be assisted by assessors designated by the parties to the dispute.

- The determination of the trade dispute is made by the Code Arbitrator or in

case of a panel of Code Arbitrators, by a majority of the members of such panel.

- The decision of the Code Arbitrators is in writing, containing findings of fact on all relevant issues presented.

Hearing Officer (B: 9)

- Any question, petition, charge or complaint concerning *severance pay, unfair dismissal or suspension, representation question or infringements on employees' self-organizational rights*, is heard and determined by a *Hearing Officer*, in keeping with the regulations and procedures of the Code.
- *The Hearing Officer is the Labour Commissioner or his appointee from the Labour Relations Service of the Department of Labour.*
- The Hearing Officer's *administrative decision is subject to review by a Board of Review.*

Board of Review (B:13)

- A *Board of Review*, upon request of a concerned party, conducts a *review of administrative decisions* of Hearing Officers.
- Each Board of Review consists of three members, selected on an ad hoc basis. Upon notification of the Labour Commissioner to the Chairman of the *Labour Board*, the Board of Review selects from among its membership one representative each of the Government, employers, and employees to serve on the Board of Review.
- The Board of Review considers the matter and issues its decision on the review, setting out its conclusions.
- The decision of the Board of Review shall be that of a majority.

- If there is no majority the original determination by the Hearing Officer stands.

Power of Labour Inspectors (B: 15)

- Labour Inspectors, under the supervision of the Labour Commissioner, are responsible for the enforcement of such requirements of this *Code as assigned and as assigned by the Minister.*
- A Labour Inspector has power:--to enter *without previous notice, inspect and examine at any time*, any premise to ensure compliance with this Code;

- to interview, either alone or in the presence of any other person, any person on the premises, and to require the persons to be questioned to sign a *Declaration of the truth of matters* being enquired into;
- to request the production of registers, certificates, notices, documents or other records required by the Code, and to inspect, examine and copy any of them;
- to enforce the posting of notices required by the Code; and -to exercise such other powers as may be necessary for implementing this Code.

On an inspection visit, inspectors usually notify the employer or his/her representative and employees or their representative of their presence, unless they consider that such notification may be prejudicial to the performance of their duties.

Labour Commissioner's Act 1950

Under this Act, the Public Service Commission appoints the Labour Commissioner who

has:

- . • responsibility for all employees in relation to employment and labour relations matters, except persons in the naval, military, or airforce of the Crown, or in the Police Force, or established employees of Government;
- . • power to *summon* witnesses, either an employer or employee,

to assist him/her in any enquiry on pain of penalty by a magistrate for failure to comply with any request by the Labour Commissioner under this Act.

Industrial Court Act, 1976, Chapter 214

Industrial Court

- . • This Court is a separate and distinct entity from the High Court of Justice, a *Superior Court of Record* with the status of a High Court of Justice;
- . • It is presided over by a *President* who is required to be a *person with substantial background and experience in industrial relations, business administration, public administration, economics, accounts, or a lawyer of not less than ten (10) years standing*.
- . • The President of the Court is *appointed by the Governor General* on the recommendation of Cabinet after consultation with the Judicial and Legal Services Commission.
- . • The Court is comprised of other members *with experience in industrial relations, business, public administration, economics or barristers and solicitors* of not less than five (5) years standing.
- . • The *President and two members usually constitute the Court*, but the Court is properly constituted if it consists of two or more members assigned by the President of the Court when hearing a trade dispute. One or more members can hear any other matter.

Powers and Functions of the Court

- The Court is empowered to: -hear and determine trade disputes; -enjoin a trade union or workers or other persons or employers from taking or continuing to take industrial action; -hear and determine complaints as well as any other matter referred to it under the Act;
 - impose a fine for contempts committed in its presence or hearing as well as for failure to comply with its orders or awards;
 - order the re-instatement of workers or payment for exemplary damages, and in so doing, it is not bound by the ordinary rule of law;
 - regulate its own procedures;
 - issue awards, which are binding on the parties as well as their successors;
 - issue injunctions, at the request of the Minister of Labour, restraining a party from commencing or continuing industrial action; and
 - issue interim awards or orders.
- An order or award or any finding or decision of the Court in any matter:
 - shall not be challenged, appealed against, reviewed, questioned or called into question in any court on any account whatsoever; and
 - shall not be subject to prohibition, mandamus or injunction in any court.
- As in the case of Trinidad and Tobago, *the decisions of the Court can only be appealed against a point of law where*: -the court had no jurisdiction; -the court has

exceeded its jurisdiction; -the order or award has been obtained by fraud; -the findings or decisions are erroneous on a point of law; or -there is any other specific illegality substantially affecting the merits of the matter.

Discretionary Powers of the Court

- In relation to any dispute before it, the Court is required to: -make such orders or awards as it considers *fair and just*; -consider the *interest of the persons immediately concerned*; -consider the *community as a whole*; and -act in accordance with *equity, good conscience and substantial merits of the case having regard to the principles and practices of good industrial relations*, and the Labour Code.
- In addition, the court may:
 - hear and determine a trade dispute in the absence of any party duly summoned and who has failed to appear before the court;
 - make suggestions as appear to be right and proper for reconciling the parties; and
 - generally give direction and take actions as are necessary or expedient for the swift and just hearing of a trade dispute or any other matter before it.

Access to the Court

- In the case of Trade Disputes, *access to the Court is through references by the Minister or the Labour Commissioner or by a party to the dispute.*
- Before a trade dispute comes before the Court, *it must be firstly filed and brought to the attention of the Labour Commissioner.*

Strikes and Lockouts

It is unlawful for any employee to strike or for the employer to lockout employees:

- while proceedings are pending before the *Industrial Court or the Court of Appeal.*
- as a result of disagreement or dissatisfaction with an order or award of the Industrial Court or the Court of Appeal.

National Interest

- Where a strike or lockout, which is not in contravention of the above paragraph, is threatened or affected, and *the Minister considers that the national interest is threatened*, the Minister may apply to the Industrial Court for *an injunction against such strike or lockout*; and
- The Court may make such order as it considers fit *having regard to the national interest*;
- The *parties are bound by an order of the Court* to refrain from or discontinue any action for a strike or lockout;
- The Court may further order that the matter be deemed to have been referred to the Court by the parties for determination.

Binding Award

- An award of the Industrial Court is binding on: -all parties to the trade disputes whether they appear or not before the Court;
- the employers or successor employer or assignee of the employer;
- all trade unions or other organizations on which the award is declared by the Court to

- be binding, as well as their successors; and
- all employees.
- .
 - Any person, trade union or other organization or employer bound by an award or order may complain to the Court *for improper administering, or of an infringement, or breach of the terms of the award or order.*
 - The Court may hear and determine the complaint and may make such order or give such directions as the justice of the case may require.

Penalties by way of fine and/or imprisonment are prescribed for various offences under these laws.

3. Dominica

Industrial Relations Act

(Chapter 89:01, No. 18 of 1986) This Act consolidates the law relating to Industrial Relations.

Industrial Relations Board and Tribunal (Part II, Secs. 3-4)

- The Act establishes the *Industrial Relations Board* consisting of *not more than thirteen members* appointed by the Minister as members: -four persons *jointly nominated by the registered trade unions* to constitute the *employees' panel*; -four persons nominated by the employers' federation to constitute the *employers' panel*; and
- four persons jointly nominated by the *registered trade unions* and the employers' federation to constitute the *Chairman's panel*.
- .
 - A *non-resident of Dominica* is not qualified to be appointed as a member of the Board.
 - If the parties, within fourteen days of the request of the Minister, fail to nominate in accordance with the request, the Minister may appoint a sufficient number of persons to any panel so that the prescribed number of persons are appointed as members of each panel.
 - A member of the Board may hold office for a period of not exceeding three years and is eligible for re-appointment.
 - The Minister shall revoke the appointment of a Board member: -on the joint request of not fewer than two-thirds of the

registered trade unions where the member is on the employees' panel;
 -on the request of the employers' federation, where a member is on the employers' panel; and
 -on the joint request of not fewer than two-thirds of the registered trade unions and the employers' federation, where the member is on the Chairman's panel.

Full-time Chairman (Sec. 5)

The Minister may appoint one person as a member of the Board on a full-time basis to be the full-time Chairman of the Tribunal. The person appointed as Chairman is required to have *knowledge and experience of industrial relations, law or administration.*

The Minister is required to consult with the registered trade unions and the employers'

federation before making an appointment.

Selection of Tribunal Members (Sec. 6)

- . • Any application or matter may be referred to the Minister for submission to the Tribunal; or
- . • Whenever a person or organization is entitled to make an application, or refer the matter to the Tribunal, such a person or organization must notify the Minister; and
- . • The Minister may offer such advice or assistance with a view to promoting agreement between the parties on such matters;
- . • The Minister, within fourteen days of receiving the notice, may take steps by *means of conciliation to secure a settlement of a trade dispute*; or appoint a Tribunal.
- . • The Minister may select three members of the Board, one from each panel, or the full-time Chairman to act as the Chairman, and one each from the employer's and employee's panel to hear that application or trade dispute;
- . • The Minister shall not select any member of the Board to serve on the Tribunal, who is directly or indirectly concerned where he/she: -holds office in or is a member of a trade union that is a party

to the application or matter; -is an employer who is a party to the application or matter; or

-is a director, shareholder, partner, officer, manager, or employee of an employer who is a party in the matter.

- . • The Minister appoints the secretary and other staff from among public officers to service the *Board and Tribunals* as are necessary.

. • The *Board* may make rules of general application for the functioning of the Tribunal (Sec. 8).

Powers of the Tribunal (Sec. 9)

- . • The Tribunal is empowered, in keeping with this Act, *to order costs* in proceedings before it *for exceptional reasons*.

. • The Tribunal has wide powers to conduct its hearing and obtain evidence including: -to summon and enforce attendance of witnesses and com

pel them to give oral or written evidence on oath; -to decide any question that may arise in the proceedings which are held in public (Sec. 10).

Exercise of Powers of the Tribunal (Sec. 12)

- . • The Tribunal is empowered to *make orders requiring compliance* with this Act or with any decision made in respect of an application or matter before the Tribunal.

. • The Tribunal is required *to hear and determine a matter with dispatch and to deliver a decision as soon as possible*. Where these requirements are not observed by the Tribunal, the Minister may withdraw the matter, and refer it to another panel selected by the Minister to hear and determine the matter.

Decisions of the Tribunal (Sec. 13-14)

- . • *The decision of a majority of the members of the Tribunal is a decision of the Tribunal.*

. • The Tribunal may *review, rescind, amend, alter or vary* any decision made by it, or may *re-hear* a matter on new information.

Decision not to be Questioned (Sec. 15)

- . • The hearing and determination of any matter by the Tribunal shall not be subject to prohibition, mandamus or injunction in any Court; and
- . • A decision of the Tribunal shall not be *questioned, challenged,*

appealed, reviewed or questioned in any Court, except on appeal to the Court (Eastern Caribbean Supreme Court) on the grounds:

- of lack of jurisdiction of the Tribunal;
- the Tribunal exceeded its jurisdiction;
- the decision was obtained by fraud; or
- the decision is erroneous in law.

- On an appeal, the Court may make such order as it considers fit.

Binding Decision of the Tribunal (Sec. 16)

A decision of the Tribunal is binding upon every person, organization, employer or trade union that is a party to the proceedings, and any of their successors or assignees.

Trade Union Recognition (Part IV, Sec. 20-21)

- . • A trade union, claiming to represent a majority of the employees in a bargaining unit may make a claim to the employer to be recognized as the bargaining agent for the bargaining unit.
- . • A claim for recognition may be made: -at any time in the absence of any recognized trade union and where no industrial agreement is in force; -not earlier than four months or later than three months prior to the expiration of the industrial agreement in force; -after twelve months of recognition and no industrial agreement has been concluded;
 - six months after the expiration of an industrial agreement and the parties failed to conclude a new agreement, unless the Tribunal permits the union claim for recognition before the expiration of that six-month period.
- . • Where a trade union fails to win recognition through the result of a poll, the trade union is not permitted to renew the claim before six months from the date on which the previous claim for recognition failed.
- . • A trade union that is recognized as the bargaining agent *for managerial employees shall* not be recognized by the employer as the bargaining agent for the bargaining unit comprised of or including other employees of that employer.

Employer to Recognize or Give Notice (Sec. 23)

- Where there is no recognized trade union for a bargaining unit, and where the employer receives from a trade union a claim for recognition, the employer is required within fourteen days: -to recognize the trade union as the bargaining agent for that bargaining unit; or
 - give written notice with reasons to the trade union and the Minister expressing doubt that the trade union is entitled to be recognized;
- in the absence of such notice, within fourteen days, the employer shall be deemed to have recognized the trade union (Sec. 24).

- Where a union is recognized or where no union is recognized and the employer receives a claim from one or more trade unions claiming to be recognized as the bargaining agent, employers are required to notify the Minister in writing of every claim for recognition as a bargaining agent, and as applicable to the union concerned.
- The employer shall not recognize any of these unions as the bargaining agent unless *required to do so by the Labour Commissioner as a result of a poll*.
- In determining the claims of trade unions for recognition as the bargaining agent for a bargaining unit, *the Minister may order separate polls in the same order in which the claim was received*.

Appropriate Bargaining Unit Determined by Minister (Sec. 25)

- Where the question of the *appropriate bargaining unit* is raised, the Minister determines the bargaining unit after hearing representations and examining the issue.
- Any party may appeal within seven days of such determination to the Tribunal.

Minister to Hold Polls (Sec. 26)

- Where the Minister receives a notice from an employer *expressing doubt* that the trade union is entitled to be recognized as the bargaining agent for a bargaining unit, the Minister is empowered to order a poll among the employees of the relevant bargaining unit to determine whether they wish the trade union making the claim for recognition to be their bargaining agent.
- The *poll procedure* is also applicable in instances where more than one trade union is contending for recognition, and may result in a *second poll* in the event the first poll did not show a *majority* for any one trade union. *More than 50% of the employees of the bargaining unit are required to cast their votes in such polls*.
- Where a *second poll* is held, the ballot in that poll gives the employees a choice as to whether they wish the trade union with *the largest number of votes in the first poll* to be their bargaining agent.

Regulations (Sec. 27)

The Minister may make detailed regulations outlining all the procedures and requirements for the organization and conduct of polls in line with this section.

Voiding a Poll (Sec. 28)

On application by an aggrieved party to the Tribunal, the Tribunal may, if it is satisfied that the poll is likely *not to reflect the true wishes of employees* eligible to vote in the poll:

- *void the poll*; and advise the Minister to cause another poll to be conducted on a date and under conditions recommended by the Tribunal.

Results of Poll (Sec. 29)

- In accordance with this Act, the Minister determines the result of any poll held, and notifies the parties in writing of the result.
- Where the majority of employees have voted in favour of any one trade union being their bargaining agent, either by the first or second poll, the employer is

required to recognize that trade union as the bargaining agent.

Recognition for Managerial Employees (Sec. 33)

- A trade union may apply to an employer for recognition to be the bargaining agent for *managerial employees*: -provided that such a trade union is not already recognized

as the bargaining agent for any category of employees by that employer.

- Upon notification in writing by the Secretary of a union that the union has been accepted by any managerial employee as his/

her bargaining agent, the employer shall so recognize the trade union (Sec. 35).

Joint Bargaining Agent (Sec. 36) Two or more trade unions may *jointly claim* to be recognized as *joint bargaining agent* for a bargaining unit for employees or for managerial employees. In such an event, the provisions of this Act apply to the trade unions as if they were a single union.

Termination of Recognition (Part VI, Sec. 37-39)

- An employee with a petition signed by a majority of the employees in the bargaining unit may apply in writing to the Minister to cause a poll to be held among employees in the bargaining unit to determine whether they wish the trade union to continue to be their bargaining agent. Such an application can be made: -*within six months of recognition* where a trade union was

recognized without a poll; -not earlier than *four months* and not later than *three months* prior to the expiration of an industrial agreement in force;

- twelve months* from the date on which the trade union was recognized and where the parties failed to conclude an industrial agreement;

- *six months* after the expiration of an industrial agreement and where no new agreement has been concluded by the parties, unless the Tribunal, on application by the employee, permits the claim to be made earlier.

- The Minister shall, unless the recognized union relinquishes its recognition, cause a poll to be held among employees to determine whether they wish the trade union to be their bargaining agent (Sec. 41).

- Where a majority of employees voted against the trade union, the recognition of the trade union as the bargaining agent *stands terminated* together with any industrial agreement in force (Sec. 42).

Collective Bargaining and Industrial Agreements (Part VII, Secs. 44-45)

- Where a trade union is recognized for either employees or managerial employees:
 - the union has *exclusive authority* and the duty to represent and bargain collectively on behalf of employees or managerial employees;

- it replaces any other previously recognized union; and -it is deemed to be substituted as a party to any industrial agreement in place of the displaced union.

- However, notwithstanding exclusive bargaining agent status, a trade union, not recognized may represent an employee in any dispute or difference concerning the *interpretation, application, administration or alleged violation* of any industrial agreement.

Obligation to Negotiate (Sec. 45-49)

. • On recognition, the trade union and the employer shall, *in good faith, treat and enter into negotiations with each other for the purpose of collective bargaining* for the applicable bargaining unit or managerial employee.

. • No industrial agreement is to be concluded between the parties while a claim for recognition by another union is pending.

. • Industrial agreements are limited to a term not exceeding *three years* except for the dispute settlement procedure, or provisions relating to the *interpretation, application, administration or alleged violation of the agreement*, which remains in force until the conclusion of a new agreement.

. • The agreement is binding upon: -the bargaining agent; -every employee in the bargaining unit or the managerial

employee;
-the

and
employer.

Settlement of Trade Disputes, (Part VIII, Sec. 55-56)

. • On failure to settle any trade dispute between the parties by negotiations, either party may *report the trade dispute to the Minister, and the other party on the same day* within six months of the dispute.

. • The Minister may refer the dispute back to the parties to follow the procedure in their industrial agreement where they fail to follow such procedures.

Conciliation (Secs. 57-58)

. • Where a trade dispute has been reported to the Minister, the Minister may: -refer the trade dispute to the *Labour Commissioner for conciliation*; or -take such other steps as he/she considers may contribute to a settlement.

. • The Labour Commissioner endeavours to settle the trade dispute through conciliation within fourteen days of the report to the Minister or such extended time as the Minister specifies.

. • The Minister is empowered to require the parties to attend conciliation meetings and the concerned parties shall so attend.

. • Where the dispute is not resolved or is unlikely to be resolved at *conciliation*, the Minister may establish the *Tribunal to hear and determine the trade dispute*.

. • These procedures do not apply to the essential services (Sec. 58).

Essential Services Disputes to Tribunal (Sec. 59)

. • The following are listed as essential services in Dominica: -The Banana Industry -The Citrus Industry -The Coconut Industry -Electricity Services -Health Services -Hospital Services -Prison Services -Sanitary and Water Services -Port Services -Fire Services -Telecommunications

. • The following dispute resolution procedures apply to the above essential services: -Where any trade dispute cannot be satisfactorily settled by

means of conciliation and where there are *serious questions* in the dispute to be settled, the Minister shall refer the dispute to the Tribunal *for arbitration*.

- Where both parties jointly request the Minister to refer the dispute to the Tribunal

for arbitration, and the Minister may:

- within fourteen days of the request attempt to settle the dispute by means of *conciliation* (Sec. 6), or
- refer the dispute to the Tribunal *for arbitration* at anytime after the dispute has been reported to him/her, whether or not a strike or lockout is taking place with respect to the dispute;
- In the event of a dispute relating to *the interpretation, application, administration or alleged violation* of an industrial agreement, *either party or the Minister* may refer the dispute to the Tribunal *for arbitration*.

Arbitration by the Tribunal (Sec. 60)

- . • The Tribunal *hears and determines* the matters referred to it.
- . • The decision of the Tribunal made in respect to arbitration shall *be final and binding* except for a point of law appealable to the Court (in accordance with Sec. 15).
- . • The trade dispute shall be *deemed to have been settled* in accordance with the decision of the Tribunal.
- . • Where a strike or lockout is in progress at the time of reference to the Tribunal *for arbitration* the parties shall: -immediately terminate the strike or lockout; -not declare or authorize any further strike or lockout in respect of the trade dispute; and
- every employee on strike shall return to work.
- . • Where a party duly summoned fails to appear before the Tribunal, the Tribunal shall proceed to hear and determine the dispute. The decision of the Tribunal shall be final and binding.

Strike or lockout may occur (Sec. 61)

- . • No trade union shall declare or authorize a strike, and no employer shall declare or authorize a lockout unless: -the strike or lockout is in respect of a trade dispute to which that trade union or employer is a party; -fourteen days have elapsed since the dispute has been reported to the Minister; and -the Minister has not referred the dispute to the Tribunal *for arbitration*.
- . • No such industrial action shall be declared or authorized in respect of a dispute which concern the interpretation, application,

administration or alleged violation of an industrial agreement. These disputes are determined by the Tribunal.

Unfair Practices (Part IX, Sec. 65-66) The Act prohibits any *unfair practices* on the part of both employer and trade union or any person acting on their behalf as outlined in these sections of the law.

Offences and Penalties (Part X, Sec. 67-70)

- . • The Act imposes severe penalties of fine on summary conviction for any breaches or violations of the law.
- . • However no prosecution shall be instituted under this Act *without the consent of the Director of Public Prosecutions*.

Board of Enquiry (Sec. 72-73) The Minister may make *inquiries regarding matters that*

may affect industrial relations. For this purpose or where there is a dispute or difference between the parties, the Minister may refer the matter to the *Tribunal*, appointed for the purpose of inquiring into such matters, and report to the Minister. The Minister may circulate the report to the *interested persons* and may publish it in such a manner considered legally appropriate.

Industrial Relations Advisory Committee (Sec. 75)

- The Minister may appoint an *Industrial Relations Advisory Committee* to:
-advise on industrial relations matters; -advise on the operation of this Act for any modification, revision
or amendment for the improvement of industrial relations.
- The Minister appoints suitably qualified persons to *the Industrial Relations Advisory Committee* who can make an important contribution, including representatives of the employers' federation, registered trade unions and public officers.

Delegation by the Minister

- The Minister may delegate to any public officer any of his powers or functions under this Act *other than his power to delegate*.
- The Labour Commissioner may delegate to any public officer any of his powers or functions given to him/her under this Act, or

as a result of a delegation by the Minister, other than this power to delegate.

Employment Protection Act

(Chapter 89:02) Act 1 of 1977

Employment Protection (Part I, Sec. 3-9)

- This Act establishes a *right to work*; and an employer may only terminate the employment of any employee on the following grounds: -any time within the *probationary* period without notice or payment in lieu of notice if the employee does not demonstrate the ability to perform in a satisfactory manner;
 - for *serious misconduct* in or in relation to his/her employment such that the employer cannot be reasonably expected to take any other course than to terminate the employment of the employee, without notice or payment in lieu of notice.
- The employer shall give the employee a *written warning* where an employee: -is guilty of a misconduct, not serious enough to warrant termination; or
 - no longer performing his/her duties in a satisfactory manner, the written warning describes the *misconduct* or *unsatisfactory conduct*, and the action the employer intends to take, should the employee repeat the misconduct or unsatisfactory work performance;
 - received a *written warning* for misconduct, and within *six months* commits the *same* or *substantially the same* as the misconduct, the employer *may terminate* the employment;
 - received a warning for unsatisfactory performance, and does not within three months, perform his/her duties in a satisfactory manner, the employer may terminate the

- employee;
- is to be terminated for reasons of reduction of the workforce/ redundancy (Sec. 11)

Non-Valid Reason for Termination (Sec. 10)

The Act stipulates that the following are *not valid reasons for*

termination of employment of any employee:

- membership in a trade union;
- participation in union activities outside working hours, or with the consent with the employer, during working hours;
- the fact that an employee filed a complaint or participated in a proceeding against the employer for an alleged violation of any law;
- race, colour, sex, marital status, religion, political opinion, national extraction or social origin; or
- being absent on Saturdays or Sundays for religious worship.

Termination as part of a Reduction of the Workforce (Sec. 11) Termination is allowed where it is or part of a reduction of the workforce on account of:

- modernization, automation, or mechanization of all or part of the business;
- the sale, closure of part or all of the business;
- reorganization for improved efficiency;
- the need for employees in a particular category has diminished or ceased;
- impossibility or impracticability to continue the business at the usual rate or level or at all due to: -shortage of materials; -mechanical breakdown; -a force majeure -an act of God; or
- necessity because of economic and market conditions including market change, contraction in volume of work or sales, reduced demand or surplus inventory.

Reasons for Termination (Sec. 15) An employer who terminated the employment for *serious misconduct, unsatisfactory work performance, or where termination is part of a reduction of the workforce*, the employer is required to give the employee *written notice* specifying the date on which the termination takes effect and the reason for the termination.

Notice of Termination (Sec. 16)

- The employer is required to give a monthly paid employee or an employee who is paid on a basis of more than one month, and whose employment is being terminated the following period of notice: -not less than *one month* for less than ten years continuous

employment; and -not less than two months for more than ten years continuous employment.

- For an employee who is paid on a basis of less than a month, the notice of termination required is not less than: -*one week* for less than two years continuous employment; -*two weeks* for more than two years but not more than five

years continuous employment; -*four weeks* for more than five years continuous employment.

Tribunal may grant leave to Terminate (Sec. 17) Where the employer wishes to terminate the employment of an employee for other reasons the employer may apply to

the *Tribunal for leave to terminate the employment of an employee*, and the Tribunal, having regard to all the circumstances, may grant such leave to terminate *on such terms and conditions and on the payment of such amount of compensation as the Tribunal may determine*.

Employee to give Notice (Sec. 19)

- . • An employee who is paid on a monthly basis or a basis of more than one month is required to give the employer one month's notice of intended termination of his/her employment.
- . • An employee who is paid on the basis of less than one month, is required to give at least one week's notice before the date on which the termination is to have effect.
- . • No notice is required where the employee terminates the employment for serious misconduct on the part of the employer (Sec. 20).

Redundancy Benefits (Part II, Sec. 21) An employee with not less than three years continuous employment and whose employment is terminated on account of redundancy, the employer is required to pay redundancy benefit for a period of continuous employment:

- Up to five years, one week's pay for the first three years, plus two weeks' pay for each year in excess of three;
 - More than five years but not exceeding ten years, one week's pay plus two weeks' pay for each year in excess of five years;
 - Exceeding ten years, nineteen weeks' pay plus three weeks' pay for each year in excess of ten years.
- A redundancy benefit is subject to a maximum of fifty two weeks' pay.

No Redundancy Benefit for Refusal of Alternative Employment (Sec. 25) An employee is not entitled to redundancy benefit where the employee has unreasonably refused suitable alternative employment offered by the employer.

Redundancy Benefit Fund (Part III)

- . • As in the case of the Barbados Severance Payments Act, this Act establishes the Redundancy Benefits Fund. The Fund is a contributory one with each employee contributing .25% of his/ her weekly wage.
- . • Redundancy fund contribution are paid to the Social Security Board which is charged with the responsibility of managing, investing and administering the fund in accordance with the law.

Payments from the Fund (Sec. 32)

- The Act/Regulation enables the Director to make payment as "a rebate" to an:
 - Employer who is liable to pay, and has paid a redundancy benefit; or
 - Employee who claims that the employer is liable to pay a redundancy benefit, and either that the employer: -has refused or failed to pay it; or -is insolvent; and -that the whole or part of the benefit remains unpaid.

Where payment is made from the Fund, the Fund is entitled to recover the amount from the concerned employer.

Enforcement (Part IV, Sec. 36)

- . • Complaints by any employee or employer or any trade union for alleged non-compliance with this Act can be made to the Minister who refers the matter to the

Labour Commissioner for conciliation within twenty-one days or such other period as the Minister may determine. Requests may also be made directly to the Labour Commissioner with the view to settlement by conciliation.

- . • Should conciliation fail, either of the parties or the Labour Commissioner may report to the Minister that the parties are unable to settle the complaint.
- . • The Minister may then refer the matter to the Tribunal to hear and determine the complaint.
- . • The Law maintains the cardinal principles of the confidential nature of the conciliation process:

“Anything communicated to the Labour Commissioner in connection with his function as conciliator shall not be admissible in evidence in any proceedings before the Tribunal, except with the consent of the person who communicated it to the Labour Commissioner.”

Jurisdiction and Powers of the Tribunal (Sec. 37-38) The Tribunal has exclusive jurisdiction to determine all questions in relation to any complaint or application under this Act. The Tribunal is empowered to order:

- . • any person to comply with the Act;
- . • re-instatement of an employee;
- . • an employer to pay an employee compensation not exceeding the equivalent remuneration that would have been paid to the employee; and
- . • the employer to pay compensation to the employee such amount as may be determined by the Tribunal, where it is not expedient to re-instate an employee.

Powers of the Tribunal in its Proceedings (Sec. 40)

- . • The Tribunal retains all the powers conferred on it by the Industrial Relations Act.
- . • Any order, determination or decision of the Tribunal:
 - is final and binding on the parties to the complaint or application;
 - May be enforced in the same manner as under the *Industrial Relations Act*.

Burden of Proof (Sec. 41) In any proceedings before the Tribunal, the burden of proof rests with the employer to establish his/her entitlement to terminate the services of an employee.

Delegation of Powers (Sec. 43-44)

- . • The Minister may delegate to any public officer any of his powers or functions other than his/her power to delegate.
- . • The Labour Commissioner may delegate to any public officer any of his powers or functions under this Act other than his/her power to delegate.

Trade Unions Act (Chapter 89:03)

Registration (Sec. 7-8)

Any seven or more members of a trade union, by subscribing their names to the rules of the union, may register the trade union under

this Act.

Unless registered in accordance with this Act:

- . • The trade union must be dissolved within three months of its formation, or
- . • Be dissolved, if the Registrar has refused to register the trade union.

Protection of Trade Unions (Sec. 3-4) In furtherance of a trade dispute, trade unions are protected from criminal prosecution for conspiracy or otherwise. The purpose of any trade union shall not be unlawful so as to render voidable any agreement or trust.

Labour Contract Act (Chapter 89:04, Act 12 of 1983)

Labour Contract (Sec. 3)

- An employer is required, within fourteen days of employment of an employee of eighteen years or more, to prepare a labour contract in writing correctly describing the terms and conditions of employment agreed between the employer and the employee in accordance with the Act.
- . • For the purpose of this Act, an employee does not include an immediate relative, a home assistant, or an agricultural worker.
- . • The employer and the employee are required to sign the agreed contract within three days on which it was delivered to the employee.
- . • Where a trade union is recognized and an industrial agreement has been concluded affecting an employee in a bargaining unit of that union, the terms of the industrial agreement apply instead of the labour contract except in so far as the labour contract provides more favourable terms.
- . • The terms of the industrial agreement remains in force for the employee until it expires if the union bargaining agency has been terminated before.

4. The Bahamas

Industrial Relations Act: Chapter 296 of 1970 as amended by the Industrial Relations (Amendment) Acts of 1996 and 1997.

Joint Advisory Committee (Sec. 4)

- The Act empowers the Minister to appoint annually a *Joint Advisory Committee* consisting of *not more than five members each*:--representing public officers, one of whom is appointed
Chairman;
-employers;
-employees.
- . • The *Joint Advisory Committee* advises the Minister on matters concerning labour relations in the Bahamas.

Trade Unions (Part II, Sec. 5) Trade unions are required to be registered with the Registrar, before commencing *any trade union activities*. The Registrar is an officer of the Ministry of Labour designated by the Minister, in accordance with this Act.

Supervision of Ballots by Registrar (Sec. 20)

- This Act requires the Constitution of every trade union registered to provide for the taking of a *secret ballot* for: -the election or removal of any officer or member of its executive committee or other governing body; -amendment of its constitution, including any change of name; and -the taking of strike action.
- The Registrar is empowered *not to approve any such constitution presented at registration* unless he/she is satisfied that every member of the union has an equal right and a reasonable opportunity of voting, and that the secrecy of the ballot is properly secured.
- Trade unions are required to give seven days written notice of the intention to take the ballot, which is taken under the *supervision of the Registrar or a designated officer*.
- Unless the ballot is so taken and *certified by the Registrar or a designated officer* to have been properly taken, the ballot is not valid, and the Registrar or a designated officer shall direct a further ballot to be taken.

Ballot for Strike Action

- For the purpose of taking a ballot to determine strike action, at least two days written notice shall be given to the Minister of the intention to take the ballot, which ballot shall be taken under the supervision of an officer of the Ministry.
- Unless the ballot is so taken and certified by the Officer to have been properly taken, the Union cannot be deemed to have determined strike action in accordance with this Act.

Power of Registrar to hold Elections (Sec. 21)

- Should a registered trade union fail to *hold elections by secret ballot* for any officer or member of its executive or other governing body *as stipulated in its Constitution*, the Registrar or a designated officer may direct that a ballot be taken under his/her supervision.
- Before such a *ballot* is taken, the Registrar gives notice of the ballot in the *gazette* and in at least one daily newspaper printed and circulated in the Bahamas.
- The notice specifies the day on which and the time and place at which the *ballot* is to be taken.

Annual Return (Sec. 30)

- Every trade union which is registered under this Act is required to:--keep proper financial accounts; -submit before the first day in June every year an annual return to the Registrar detailing its assets and liabilities, incomes and expenditure, and other matters in keeping with this section.

Immunity from Criminal and Civil Responsibility (Sec. 37)

Like other Caribbean countries, trade unions are protected from criminal and civil prosecution in a Court of law for conspiracy, breach of agreement or tort for any act in contemplation of a furtherance of a trade dispute.

Code of Industrial Relations (Sec. 40)

As is the case in Jamaica, the law provides a detailed *Code of Industrial Relations Practice* as set out in the fourth schedule to:-

- . • provide practical guidance for the promotion of good industrial relations;
- . • provide practical guidance for the granting of negotiating rights; and
- . • assist employers and trade unions to negotiate effective collective agreements.

The Code of Industrial Relations Practice would be used as a guide where applicable and relevant by the Industrial Tribunal in determining any matter before it.

Recognition of Trade Unions (Part III) Duty of Employers

(Sec. 41)

- Every employer is required to recognize as the bargaining agent:--a trade union with *more than fifty percent of employees* in a bargaining unit whose members are in good standing; or
 - in the event more than one union claiming more than fifty percent support, that *union which the Minister determines in accordance with Sec. 42 to be entitled to such recognition* is recognized by the employer.
- In keeping with this Act, the employer is required *to treat and enter into negotiations* with that trade union for collective bargaining purposes.

Recognition as Bargaining Agent (Sec. 42)

- When only one union claims more than 50% of the employees concerned to be members in good standing of the union, *then the Minister determines*, in keeping with this Act, whether the union is entitled to recognition, and for this purpose the Minister has powers to:--determine the appropriate bargaining unit; -request all relevant information from the concerned employer and the union in this connection; and
 - determine whether more than 50% of the concerned employees desire the applicant union to be their bargaining agent.
 - In the event two or more unions claim more than 50% support of the concerned employees, the Minister, after determining the *appropriate bargaining* unit and obtaining relevant information and documents from the concerned parties, is empowered to:--take a *representational count* by secret ballot in order to determine what union the employees desire to be their bargaining agent.
 - . • Where the Minister has determined *whether any union* (and, if so, which) is entitled to be recognized as the bargaining agent, the Minister notifies all the concerned parties accordingly. *The Minister's determination is final and shall not be enquired into in any court.*

Application to the Minister to Review a previous Recognition

(Sec. 43)

- At least 25% of the employees comprised in the bargaining unit or the employer may apply to the Minister to revoke his/her determination which allowed the current recognition so that another union could be recognized:--no such application is entertained before *twelve months* from the date of recognition where no industrial agreement is in force; or

- where an industrial agreement is in force, no application is entertained before *two years* from the commencement of the agreement.
- After due consideration of an application, the Minister informs the concerned parties of his/her determination or decision *which is final and shall not be enquired into in any court.*

Industrial Agreement (Part IV, Sec. 46)

- Every *industrial agreement* shall contain provisions for:--effective dispute settlement machinery including *conciliation*; and
- reference of any matters on *interpretation or application* of any provision of the agreement in relation to an *essential service* to the Industrial Tribunal; or
- and in relation to *non-essential service* to the *Tribunal*, for final settlement in keeping with this Act.
- *An industrial agreement under this section shall have effect only if it is registered with the Tribunal in accordance with Section 49.*

Contribution to the Bargaining Agent (Sec. 47)

Subject to the prior agreement of 60% of the concerned employees, every employee shall *pay a contribution* to the *bargaining agent* as union dues for members, and in the case of non-members 90% of such dues.

Registration of Industrial Agreement (Sec. 49)

- Signed, draft Industrial Agreements are sent to the Tribunal with a request for its registration and to the Minister for information.
- The Minister may send comments on the draft agreement within fourteen days to the Tribunal.
- If after considering the Minister's comments the Tribunal is satisfied that the draft agreement does not contain any illegality, the Board shall request the parties to execute the agreement in proper form and shall register the agreement when so executed.
- In cases where the Tribunal is not satisfied, the Tribunal meets with the parties or their representatives, and either:--register the agreement without amendment or modification;

or -refuse to register the agreement and refer it back to the parties to prepare a new agreement.

Effect of Industrial Agreements (Sec. 51)

Every industrial agreement so registered shall, during its continuance, be *binding on the concerned parties in keeping with this section.*

Industrial Tribunal (Part IVA)

Establishment (Sec. 53A)

The Act establishes an *Industrial Tribunal* (Tribunal) with an *official seal judicially noticed* and consists of:-

- three members appointed by the Governor-General on the advice of the Judicial and Legal Service Commission, one of whom is *appointed President of the Tribunal and the other two Vice-Presidents. The*

Secretary and other staff of the tribunal are appointed from amongst public officers.

Jurisdiction of Tribunal (Sec. 53B) The Tribunal has jurisdiction to:-

- . • hear and determine trade disputes in essential and non-essential services;
- . • register industrial agreements relating to an essential or nonessential service;
- . • hear and determine matters relating to the registration of such agreements; and
- . • hear and determine any other matters in accordance with this Act.

Full Tribunal (Sec. 53C)

- Where the President of the Tribunal considers it requisite in the *public interest*, the President may direct that:--the *full Tribunal* comprised of three members sit to determine any such matters; or
 - one member of the Tribunal sit together with two persons, one each selected from a panel as provided in sub-sections 4 and 5 of this Section.
- . • The decision of the *full Tribunal* is according to the majority.
- . • *The Director of Labour* (Director), after consultations with associations of employers and employees, may by notice published in the Gazette appoint two panels from among persons who have wide experience in trade, industry, financial or commercial matters, trade unionism or administration:--not more than six persons based on his/her consultations

with employers' association; and -not more than six persons based on his/her consultation with associations of employees (sub-Section 4 and 5).

- . • The President may, as deemed necessary, select one person from each panel to sit on the *full Tribunal for a period of three years*.
- . • *The Director may revoke any appointment* to a panel at any time although the appointment is for a period of three years.

Powers of the Tribunal (Sec. 53E)

- . • The Tribunal, in considering any matter before it, may: -refer a dispute back to the parties for further consideration; -make an order or award or give a direction; -award compensation for any breach or non-observance of
 - .an order or award or any term; and -discuss any matter or part of a matter or refrain from further hearing or from determining the matter.
- . • The Tribunal, in making its award in trade disputes is guided by the necessity to:
 - maintain a high level of employment; -preserve and promote the competitive position of Bahamian
 - .products in the local and overseas markets; and -take into consideration the requirements of the *pubic interest*.
- . • In relation to any dismissal of an employee, the Tribunal may: -order re-engagement or re-instatement in the former or similar position; or
 - .- payment of compensation or damages or exemplary damages in lieu of such re-engagement or re-instatement; in circumstances that are *harsh and oppressive and in keeping with the principles of good industrial relations*.
- . • Questions of interpretation of any order or award of the Tribunal or

interpretation of an industrial agreement are determined by the Tribunal (Sec. 53J).

Appeal to Court of Appeal (Sec. 53K)

- Subject to this Act, any concerned party may appeal to the Court of Appeal on any of the following grounds that: -the Tribunal had no jurisdiction in the matter; -the Tribunal has exceeded its jurisdiction on the matter; -the order or award has been obtained by fraud; -any finding or decision is erroneous in point of law; -the order or award is *inordinately high or inordinately low*; or -there was some other specific illegality.
- On the hearing of an appeal in any matter under this Act, the *Court of Appeal* in keeping with this section may make such *final* or other order as the circumstances of the matter may require.

Tribunal Award Binding (Sec. 53L)

An award of the Tribunal is *binding on all concerned parties* in keeping with this section.

Regulation of Procedure (Sec. 53M)

The Tribunal regulates its own practice and procedure for the hearing and determination of matters before it.

Interpretation of Orders and Awards (Sec. 68)

The Tribunal determines questions of interpretation of any of its orders or awards.

Appeals (Sec. 70)

- Except on a *point of law*, a decision of the Tribunal *is binding on all concerned parties or persons*, and any such decision: -*shall not be challenged, appealed against, reviewed, quashed or called into question in any court or any account*; and -shall not be subject to *prohibition, mandamus or injunction* in any court on any account.
- An appeal on a point of law from any decision of the Tribunal lies with the *Court of Appeal* whose decision is final.

Trade Dispute Procedures (Part VI, Sec. 71-72)

• Unresolved trade dispute are to be reported to the Minister in writing by any concerned party within twelve months from when the dispute first arose giving the relevant details.

• The Minister may:

- refer the matter back to the parties for settlement within seven days through existing suitable machinery between the parties and a further seven days if necessary;
- upon failure of the parties to resolve the dispute, endeavour to settle the dispute by *means of conciliation within sixteen days*.

Conciliation Meetings (Sec. 73)

• At conciliation under the Minister, *the parties to the dispute are required to*

attend and to enter conciliation in good faith, where the Minister serves written notice on the parties concerned requiring them to attend a conciliation meeting.

. • Any party to a dispute who fails or refuses: -to enter into conciliation in good faith, or -to attend a meeting when required to do so by the Minister,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding five thousand dollars.

Reference of Disputes in Essential Services to the Tribunal

(Sec. 75)

Where the parties fail to settle the dispute at conciliation under the auspices of the Minister within sixteen days in an *essential service*, the Minister may refer the dispute to the *Tribunal if in the Minister's opinion the public interest so requires*.

The essential services are:

- . • electricity and water services;
- . • sewerage or other waste product dangerous to health;
- . • hospital service;
- . • any service essential to aircraft safety; and
- . • fire, telecommunications, or prison services.

Non-essential Services Disputes to the Tribunal (Sec. 76)

Should conciliation under the Minister fail to settle any trade dispute within sixteen days, and further efforts by the parties themselves as directed by the Minister fail to settle any such dispute in an *essential* or *non-essential service*, the Minister shall refer the dispute to the *Tribunal for settlement*.

Strikes and Lockouts (Sec. 78)

This Act prohibits an employee to take part in a strike and an employer to declare a lockout unless:

- . • a trade dispute is reported to the Minister in accordance with Sec. 71;
- . • the time allowed - up to fourteen days for the parties to resolve the dispute and sixteen days for the Minister to conciliate – has elapsed (Sec. 72);
- . • in relation to a dispute within *an essential service or a nonessential service*, the dispute has not during the time allowed by Sec. 72 been referred by the Minister to the Tribunal; or
- . • a strike vote has been taken.

Illegal Strikes and Lockouts (Sec. 79)

- . • The Act declares that any strike or lockout:
 - is illegal if it is *not in furtherance of a trade dispute* within the trade or industry or if it is designed or calculated to coerce the Government either directly or indirectly or by inflicting hardship upon the community.

. • This law further declares that it is illegal to commence or continue, or apply any sum in furtherance or support of any such illegal strike or lockout.

Minister to Refer Lawful Strike to the Industrial Tribunal

(Sec. 80)

. • When a *lawful strike or lockout* (not in contravention of Sec. 78 and 79) is in progress, the Minister, in the *public interest* may refer the dispute which has given rise to the strike or lockout to the *Tribunal for settlement*.
. • Upon the Minister's written notification to the concerned parties of such reference, any person participating in the strikes or lockout shall immediately discontinue such participation.

Prohibited Industrial Actions (Sec. 81)

. • Strikes and lockouts are prohibited in consequence of a trade dispute while proceedings taken in relation to that dispute are pending before the *Tribunal or the Court of Appeal*.
. • Any person who contravenes this provision is guilty of an offence and liable on summary conviction to fine and imprisonment.

Protection of Private Rights (Sec. 82)

. • The law protects freedom of association and prohibits any employer requiring an employee, as a term or condition of employment to become or not to become a member of any trade union.
. • The law also protects persons refusing to take part in illegal trade

disputes, strikes, or lockouts. Such persons shall not be subject to: -removal from office or expulsion from any trade union; -to any fine or penalty; or -deprivation of any right or benefit; or -to any disability or disadvantage whatsoever; notwithstanding anything to the contrary in the Constitution of any trade union.

Employment Act, 2001

Redundancy Payments (Sec. 26-28) An employee is entitled to redundancy payment where the employee with one year or more of continuous employment, has been dismissed for reasons of redundancy as follows:

. • two weeks' notice or two week's pay in lieu of notice, and
. • two weeks' basic pay (or a part on a pro rata basis) for each year up to twenty-four weeks;

For a supervisory or managerial employee: • one month's notice or one month's basic pay in lieu of notice; and • one month's basic pay (or a part on a pro rata basis) for each year up to forty-eight weeks.

Payment of redundancy must be made on or before the date of the employee's redundancy.

Where an employer provides a gratuity or a non-contributory pension for an employee, the employee is not entitled to both redundancy pay and gratuity or pension, but the employee is required to select the

one he/she prefers.

Termination of Employment with notice (Sec. 29)

The law requires employers to give employees notice to terminate their contract of employment as follows:

- For employees who have been employed for six months or more but less than twelve months: -one week's notice or one week's basic pay in lieu of notice, and
 - one week's leave pay (or a part on a pro rata basis) for the period between six and twelve months.
- For employees with twelve months or more employment: -two weeks' notice or two weeks' basic pay in lieu of notice, and
 - two weeks' basic pay (or a part on a pro rata basis) for each year up to twenty-four weeks.
- For supervisory or managerial employees: -one month's notice or one month's basic pay in lieu of notice, and
 - one month's basic pay (or a part on a pro rata basis) for each year up to forty-eight weeks.

An employee is required to remain on the job until after the expiry of:

- two weeks notice to the employer if the period of employment is one year or more but less than two years; or
- four weeks notice to the employer if the period of employment is two years or more, unless the employer breaches the terms and conditions of employment.

Summary Dismissal (Sec.31-32) The law allows an employer to dismiss an employee without notice or pay for fundamental breach of contract of employment or who acted in a manner repugnant to the fundamental interests of the employer, the grounds for which are set out in these sections. However, the employee is entitled to previously earned pay.

Unfair Dismissal (Sec. 34-43) Employees shall not be unfairly dismissed. Fair or unfair dismissals shall be determined in accordance with the substantial merits of the case.

A dismissal is regarded as unfair if the reason or principal reason relates to:

- trade union membership or activities;
- discriminatory selection for redundancy, or selection in breach of redundancy procedures
- pregnancy or reasons connected with pregnancy;
- a lockout, strike or other industrial action.

The Industrial Tribunal is empowered to determine complaints of unfair dismissal and may award such remedies as it considers fit in keeping with the law or, order reinstatement or re-engagement as appropriate.

Other Provisions in the Act

The Act also provides for the protection, procedures, requirements and regulations in respect of several other matters including:

- . • standard hours of work;
- . • sick leave, vacation leave, maternity leave and family leave;
- . • children and young persons;
- . • wages;
- . • prohibition of fingerprinting and lie detector tests;
- . • personnel information and returns;
- . • change of ownership of business;
- . • details of payment statements to be provided to employees;
- . • annual report required by the Minister on the administration of this Act to be submitted to both Houses of Parliament; and
- . • powers of the Minister to make relevant regulations.

Penalties

These Acts provide for penalties of fine and/or imprisonment upon conviction in a court of law for various offences.

5. Jamaica

Trade Union Act (Chapter 389: October, 1919)

Registration of Trade Unions (Sec. 6)

All trade unions upon establishment are *required to be registered within thirty days* after the date of its establishment.

Purposes of Trade Unions not Unlawful (Sec. 3)

The purposes of any trade union shall not, by reason merely that they are in *restraint of trade*:

- *be deemed to be unlawful*, so as to render its members liable *to criminal prosecution for conspiracy or otherwise*.

Agreement or Trust remains valid (Sec. 4) The purposes of any trade union shall not by reason merely that they are in restraint of trade, *be unlawful so as to render void or voidable any agreement or trust*.

Labour Officers (Powers) Act, 1943, Chapter 203

Power of Labour Officers

A *labour officer* is empowered at all reasonable times to enter upon any premises, *other than a dwelling house*, for the purpose of carrying out any inspection or inquiry to ensure the observance of all labour legislation.

The Labour Relations and Industrial Disputes Act

(Act no. 14 of 1975, April 1975)

Labour Relations Code (Part II, Sec. 3)

- In accordance with the Act, the Minister prepared and published a *Labour Relations Code, 1976, with practical guidance for the promotion of good labour relations*, taking into account: -the *principles of free collective bargaining*; -the requirements for *orderly procedures* in industry for

effective resolution of disputes by *negotiation, conciliation or arbitration*;

- the importance of *good personnel management techniques* designed to secure labour-management co-operation and the avoidance of unfair labour practices on both sides.
- The approved and published *Labour Relations Code, 1976*, accordingly provides *direction and guidance* on the following matters: -responsibilities of employers, employees, trade unions and employers' associations;
 - personnel management practices: employment policies, manpower use and planning, security of workers, working environment, payment of wages;
 - workers' representation and the collective bargaining process: trade union recognition, bargaining units, collective bargaining, and collective agreements;
 - communication and consultation; -grievance and disciplinary procedures: dispute procedures, individual dispute procedure, and disciplinary procedure.
- The Labour Relations code is a reference point for the conduct of labour relations, and provides guidance to *the Industrial Disputes Tribunal, and any Board of Inquiry* in determining any relevant issue.

Ballots to Determining Bargaining Rights (Sec. 5)

- The Minister is empowered to institute a *ballot* of workers or category of workers to determine: -whether they wish a trade union of their choice to have bargaining rights in relation to them; or
 - as to which of two or more trade unions claiming bargaining rights should be *recognized* as having such bargaining rights.
- The Minister is also empowered to make appropriate arrangements to ensure that the ballot is properly conducted.
- In the event that there is a dispute where the Minister decides to conduct a ballot and has failed to settle the dispute, the Minister is required to *refer the dispute to the Tribunal for determination*.
- The Minister, upon ascertaining the result of any ballot taken, issues to the employer and every trade union concerned a *certificate* in the prescribed form setting out the result of the ballot.
- The employer shall recognize the union chosen by a *majority of workers eligible to vote* as having *bargaining rights* for workers in the relevant bargaining unit.

Joint Bargaining Rights (Sec. 5 (6))

- In a ballot where two or more trade unions are contending for bargaining rights, and the results show that *each of two or three trade unions* receives the votes of not less than 30% of the number of workers eligible to vote, the Minister, on the written request of *at least two of the trade unions*, informs the employer that these trade unions wish to be *recognized as having joint bargaining rights* for the workers concerned in the relevant bargaining unit.

- The employer is required to *recognize those unions jointly* as soon as the employer receives such information.

These provisions under Section 5 *do not apply* to the Government or to workers employed by the Government (Sec. 25).

Collective Agreements (Sec. 6) Every collective agreement which does not contain *express procedure for the settlement of industrial disputes without stoppage of work* shall be deemed to contain the following implied procedure:

- the parties shall first endeavour to settle any dispute or difference between them by *negotiation*;
- should they fail to settle by negotiation, any or all the parties may request the Minister in writing to assist them to resolve the dispute by *means of conciliation*;
- should the conciliation process fail, *all the parties* may request in writing that the Minister refer the matter to the *Industrial Disputes Tribunal for settlement*.

Industrial Disputes Tribunal (Part III, Sec. 7)

- The Act establishes the *Industrial Disputes Tribunal*.
- Members of the Tribunal are appointed by the Minister and consists of: -a *Chairman and two Deputy Chairmen* who have sufficient knowledge of, or experience in labour relations; and

- at *least two members from a panel* supplied by employers' organizations, and an *equal number of members from a panel* supplied by workers' organizations;
- special members may be appointed as the need arises *to deal with disputes in the public interest*.

- The Minister is empowered to revoke the appointment of any member of the Tribunal.

- The Tribunal can sit in several divisions as necessary. The Chairman can assign: -one member in an industrial dispute dealing *with*

interpretation, application, administration, or alleged violation of a collective agreement; or

- three members of the Tribunal, if all the parties to a dispute request the Chairman to have the matter dealt with by a division comprising three members. This Tribunal consists of either the Chairman or one of the Deputy Chairmen and one each from the employers' and workers' panel.
- three *special members* to deal with *disputes where the Minister intervenes in the public interest* (Sec. 10 and second schedule).
- A division of the Tribunal, by agreement between the Chairman and all the parties, *may be assisted by one or more assessors* equally appointed by the employer or an organization representing the employer, and by the trade union concerned.

Industrial Disputes in Essential Services (Sec. 9)

- A dispute in any *essential service* may be reported in writing to the Minister by any party to the dispute or by any one on behalf of any such party. The following undertakings are deemed to provide essential services: (first schedule)

- water, electricity, health, sanitary, public passenger transport, fire fighting, correctional, overseas telecommunications and telephone;
 - loading and unloading of ships, storage and delivery of goods in connection with docks and wharves; -oil refining with loading, distribution, transportation or retailing of petroleum fuel for engines or motor vehicles or aircraft;
 - any business whose main function consisted of: -the issue and redemption of currency; -government securities, and trading in securities; -management of the official reserves of the country; -administration of exchange control; -banking services to the government; and -air transport and civil aviation services.
 - Where such a dispute in an *essential service* is reported, the Minister shall: -*within ten days*, refer the dispute to the *Tribunal for settlement*;
- or
- give *written direction* to the parties to settle the dispute through such specified means if the Minister *is not satisfied* that attempts were made to settle the dispute by all such means as were available to the parties.
 - Upon failure to settle the dispute, the Minister shall within *ten days* of the report of failure, refer the dispute to the *Tribunal for settlement*.
 - Any industrial action in furtherance of an industrial dispute in any undertaking which provides an essential service is an *unlawful industrial action* unless: -that dispute was reported to the Minister and the Minister

failed to comply with the requirements of this Act; or -where the dispute was referred to the Tribunal for settlement and the Tribunal failed to make an award within twenty-one (21) days (Sec. 12).

- The Act empowers the Minister to *refer any industrial dispute to the Tribunal* for settlement where any unlawful industrial action is contemplated or begun in an *essential service*.

Intervention by the Minister in the Public Interest in other undertakings (Sec. 10)

- Where an industrial dispute appears to the Minister to exist in any undertaking *not listed* as providing an essential service, the Minister is empowered *to issue an order subject to a negative resolution of the House of Representatives, declaring that any industrial action is likely to be gravely injurious to the national interest where:*
 - any such industrial action in contemplation or furtherance of that dispute has begun or is likely to begin; and
 - such action *would cause an interruption of the supply of goods or in provisions of services on such a nature and scale, as to be likely to be gravely injurious to the national interest.*
 - Where the Minister makes such an order, the Minister: -serves the parties to the dispute with a copy of the order; and
 - directs in writing the parties to refrain from pursuing or continuing any such industrial action and *to use means available to them to settle the dispute within thirty days;*
 - Failure to resolve the dispute as directed by the Minister, empowers the Minister to invite:

-all the parties to meet and jointly nominate a person as a special *member of the Tribunal to preside over the division of the Tribunal to deal with that dispute;*

- the employer and trade union who are parties to the dispute each to nominate one special member of the Tribunal.
- If the Minister *does not receive nominations* for *all the special members* of the Tribunal within seven days, the *Minister may, without further consultation*, refer the dispute to the Tribunal for settlement.
- Where a dispute relates to the *appointment of any person to a public office or to removal of or disciplinary action*, whether in an essential service or not, the Minister directs the parties in writing to follow the procedure provided by or under the *Constitution of Jamaica*, and does not refer such matters to the Tribunal (Sec. 9 (7) and Sec. 10 (7)).

Reference to the Tribunal at the Request of the Parties (Sec. 11)

- Subject to the provisions of Sections 9 and 10 dealing *with undertakings providing essential services and the public interest* respectively, all the parties to any industrial dispute may request the Minister to refer such dispute to the Tribunal for settlement.
- The Minister may require the parties to exhaust all available means to settle the dispute directly before referring it to the Tribunal.
- At the request of all the parties to a dispute, and before the Tribunal begins to deal with the dispute, the Minister *refrains from or withdraws* the reference to the Tribunal.

Reference to the Tribunal on the Minister's Initiative (Sec. 11A) Notwithstanding the procedures with regard to undertakings providing *essential services* (Sec. 9), the *Public Interest* (Sec. 10), and reference to the Tribunal at the request of all the parties (Sec. 11), the Minister may on his/her own initiative:

- refer the dispute to the Tribunal for settlement: -if the parties genuinely attempted without success to settle the dispute; or
- if, in the opinion of the Minister, all circumstances surrounding the dispute constitute such an *urgent or exceptional situation* that it would be expedient to do so; or
- give direction to the parties to fully utilize existing dispute resolution means between them to settle the dispute.

The Minister reserves the power to refer the dispute to the Tribunal.

Awards of the Tribunal (Sec. 12)

- The Tribunal is required normally to make its award within *twenty-one* days or as soon as may be practicable.
- The Tribunal may extend the original twenty-one days to a further period not exceeding twenty-one days at the request of any of the parties; or for such further period beyond the second twenty-one days as the Tribunal may, with the agreement of the parties, determine.
- A copy of the award is given promptly to each of the parties and to the Minister.
- The Tribunal may set out reasons for its award if it is necessary or expedient.
- An award in respect of any industrial dispute referred to the Tribunal for settlement shall *be final and conclusive and no proceedings shall be brought in any Court to impeach the validity thereof except on a point of law* (Sec. 12(4)).

- . • If, after reference to the Tribunal, industrial action has begun, the Tribunal is empowered to order that such action cease from such time as the Tribunal may specify; or if industrial action is threatened, the Tribunal is empowered to order that such action shall not take place;
- . • The Tribunal may encourage the parties to endeavour to settle the dispute by *negotiation or conciliation and, if they agree to do so, may assist them in this regard.*
- . • *An Award by the Tribunal is binding* on the employer, trade union and workers to whom the award relates, and is an implied term of the contracts of employment of the relevant workers.
- . • *Questions of interpretation* of an award may be referred to the Chairman of the Tribunal for a decision.

Boards of Inquiry (Part IV – 14)

- . • Where any dispute exists or is apprehended, *the Minister may inquire into the causes and circumstances of the dispute*, and may refer the matter connected with or relevant to the dispute to a *Board of Inquiry*. The Board of Inquiry is appointed by the Minister for the purpose of inquiring into, reporting on, and making such recommendation as the Board thinks fit.
- . • The Minister may also refer *any matter connected with labour relations or the economic conditions in Jamaica to a Board of Inquiry* appointed by the Minister for the purpose of inquiring into, reporting on, and making such recommendations as the Board thinks fit.
- . • A Board consists of such number of members as determined and appointed by the Minister. Where the number is more than one, the Minister appoints one of them as Chairman.
- . • The Board reports as soon as possible to the Minister.
- . • Except for information provided in private (Sec. 19), the Minister may publish periodically any information obtained or conclusions arrived at by a Board as a result of its inquiry.

Appearance before the Tribunal and Boards (Part V, Sec.16)

Any party to an industrial dispute referred to the Tribunal, or in respect of which a Board of Inquiry has been appointed, may either appear in person or be represented by an attorney-at-law, an officer of the concerned trade union, or employer, or a corporation official, or with the permission of the Tribunal by any other person selected as a representative.

The *Attorney-General* or his/her representative shall be entitled to appear before the Tribunal or a Board *whenever it is considered expedient in the public interest*, as in Trinidad and Tobago.

Regulation of Tribunal and Board procedure (Sec. 20)

In line with this Act, the *Tribunal and a Board* may regulate their own procedures and proceedings.

Application to Government and its Employees (Sec. 25)

This Act applies generally to employment in the Government service, except the military and para-military forces.

Special Provisions in Respect of Certain Awards (Sec. 29)

Where a dispute, relating to wages, hours of work or other terms and conditions, is referred for settlement to a person other than the Tribunal, that person shall not make:

- . • an award which is *inconsistent with any law* regulating such conditions;
- . • any award which is *not in accord with the national interest*.

No Industrial Action Pending Appeal (Sec. 31) No party to an industrial dispute shall continue or take industrial action while proceedings relating to any *award, order, requirement, or decision* of the Tribunal, are pending before any Court in the exercise of its civil jurisdiction.

Industrial Action Prejudicial to the National Interest (Sec. 32) Where the Minister considers that any industrial action is, or likely to be:

- *gravely injurious to the national economy, to imperil national security or to create a serious risk to public order; or*
- *to endanger the lives, safety and health of a substantial number of persons,* the Minister may apply to the *Supreme Court ex-parte* for an order restraining the parties from commencing or from continuing industrial action; and the *Court* may make such order as it considers fit *having regard to the national interest*.

The Employment (Termination and Redundancy Payment)

(Act 31 of 1974, Dec. 1974)

Minimum Period of Notice (Part II, Sec. 3)

. • This Act requires an employer to give *notice for the termination of the contract of employment* of an employee with at *least four weeks continuous employment* not less than: *-two weeks' notice* if the period of employment is less than

.five years; -four weeks' notice for continuous employment for five years or more but less than ten years; *-six weeks' notice* for continuous employment for ten years or more but less than fifteen years; *-eight weeks' notice* for continuous employment for fifteen years but less than twenty years; *-twelve weeks' notice* for continuous employment for twenty years or more.

. • An employee with continuous employment for at least four weeks is required to give *not less than two weeks' notice* to terminate his/her contract of employment.

. • Either party to a contract of employment is *free to waive the right* to receive notice at the time of termination, or from accepting a *payment in lieu of notice*, or from giving or accepting notice of longer duration.

Dismissal on the grounds of Redundancy (Part III, Sec. 5) An employee can be dismissed by *reason of redundancy*, if the dismissal is attributable wholly or partly to the fact that:

- . • the employer has ceased, or intends to cease business for which the employee was employed;

- the requirements of that business or the employee's particular work have ceased, or diminished or are expected to cease or diminish; or
- if the employee has been rendered incapable of working as a result of accident injury in the course of employment or developed any disease due to the nature of the employment.

Right to Redundancy Payment (Sec. 5 and Regulation 8) Where an employee, with continuous employment for a period of *one hundred and four weeks*, is dismissed by reason of redundancy, the employee is entitled to a *redundancy payment*. The amount of the redundancy payment to an employee with continuous employment shall be:

- for up to ten years of employment, two weeks' pay for each year;
- for more than ten years of employment: -the first 1-10 years, two weeks' pay for each year; and -*eleven and more years*, an additional three weeks' pay for

each year from the 11th year and over.

Exclusion from the Right of Redundancy Payment (Sec. 6) An employee is *not entitled* to a redundancy payment where the employee:

- terminates the contract outside a situation where he/she is compelled, by reason of the employer's conduct, to terminate that contract without notice (Sec. 5(5)(c));
- is retired and is entitled to retirement benefits, pension, superannuation, or other retirement benefits, except benefits under the National Insurance Act;
- is dismissed without notice for valid reasons; and
- unreasonably refuses an offer in writing to renew his/her contract or to re-engage under a new contract on no less favourable terms and conditions.

6. Guyana

The Labour Act – Chapter 98:01

The *Labour Act* was enacted in 1942 to provide for the establishment of the Department of Labour, for the regulation of the relationship between employers and employees and the settlement of differences between them.

Appointment of Labour Personnel (Part 1, Sec. 3)

- The Act provides for the appointment of a Chief Labour Officer, a Deputy Chief Labour Officer, an Assistant Chief Labour Officer, Senior Labour Officers, Labour Officers, and other staff.
- The Deputy Chief Labour Officer and the Assistant Chief Labour Officer assist the Chief Labour Officer in the performance of his/ her duties.
- In the absence of the Chief Labour Officer, the Deputy Chief Labour Officer or, in his/her absence, the Assistant Chief Labour Officer exercises all the powers and may perform all the duties of the Chief Labour Officer.

Powers of the Minister (Part II, Sec. 4) The Minister is empowered in *any trade dispute or where a difference exists or is apprehended* between any employer and employees, to exercise all or any of the following powers:

- to inquire into the causes or circumstances of the difference;
- to take any expedient steps to promote a settlement of the difference;

- with the consent of *both parties, or of either of them, or without their consent*, to refer the matter for settlement by arbitration by a Tribunal consisting of one or more persons *appointed by the Minister*. Where the Minister refers the dispute to arbitration without the consent of either party, the Minister shall notify the parties that the continuance of the dispute is likely to be *gravely injurious to the national interest*;
- upon appointment of such a Tribunal, *the Minister furnishes the Tribunal with its terms of reference* containing a statement of the causes and circumstances of the difference between the parties into which the Tribunal is required to inquire;
- the Tribunal is required to make its award as soon as possible and accordingly notify the Minister and the concerned parties; and
- the Minister may request an interim award from the Tribunal with respect to any matter referred to it.

The award is binding on the parties to whom it relates.

The Minister may make *regulations* for the conduct of such arbitration proceedings (Sec. 5).

Advisory Committee for Trade Dispute (Sec. 6)

- Where any trade dispute exists or is apprehended, the Minister is empowered to refer any matters connected with, or relevant to such a dispute to an *Advisory Committee* appointed by the Minister. This Committee inquires into the matters referred to it and presents a report to the Minister with such recommendations, as the Committee may deem expedient.
- The Advisory Committee consists of a Chairman and such number of other members as the Minister considers appropriate.

Powers of the Minister to make Regulations

This Act empowers the Minister through *tripartite advisory committees* to:

- regulate the wages paid in any occupation through minimum wages - Part III;
- prescribe the number of hours which may normally be worked by an employee in any week or on any day in any occupation – Part VII (Sec. 28).

Collective Agreements – Part VIIA

- *Every Collective Agreement* which does not contain a provision which (however expressed) states that the agreement or part of it *is intended not to be legally enforceable, shall be conclusively presumed* to be intended by the parties to it to be a legally enforceable contract.
- A copy of every collective labour agreement signed by the parties shall be presented to the Chief Labour Officer not later than three months after signing.

General Powers of Labour Officials (Sec. 30)

Any designated officer of the Labour Department is empowered and authorized where labour is employed in any premises:

- to enter, inspect and examine such premises at all reasonable times whether by day or night, and to obtain from any employer information on employees, their wages, hours and working conditions of employees;
- to take a member of the police force if there is likely to be any serious

obstruction in the execution of his/her duties;

- . • to carry out any test, examination or enquiry necessary;
- . • to interview alone or in the presence of witnesses, the employer or the staff;
- . • require, with written notice, the production of any books, registers or other documents required to be kept by any law;
- . • enforce the posting of notices required by law;
- . • take or remove for purposes of analysis samples of materials and substances used or handled;
- . • to require from employers returns giving information as to wages, hours and conditions of work of employees; and
- . • to inspect the register of accidents and to obtain and require from an employer information as to the causes and circumstances relating to any accident.

A designated officer, on an inspection visit, notifies the employer or employer representative of his/her presence, unless such notification may be prejudicial to the performance of the officer's duties.

Powers of Labour Officials (Sec. 38)

The *Permanent Secretary* may institute or cause to be *instituted any*

prosecution for the purpose of enforcing any of the provisions of this Act and *any officer of the Department of Labour may appear as prosecutor* for or on behalf of the Permanent Secretary.

Trade Unions Act:

Chapter 98:03

Trade Unions

Trade Unions are prohibited from carrying out business unless it is *registered* (Section 11) with the Registrar of Trade Unions. A trade union, not registered in accordance with this Act, shall be dissolved within three months of its formation, or be dissolved if the registrar of trade unions refuses to register it in keeping with this Act (Section 24).

Any seven or more members of a trade union may, by subscribing their names to the rules of the union, register the union.

Trade Union Recognition – Act No. 33 of 1997

This Act was enacted to provide for the improvement and promotion of industrial relations by the establishment of

procedures for the certifying of trade unions as recognized majority unions.

Recognition and Certification Board (Sec. 4 – 8)

- The Act establishes a *Trade Union Recognition and Certification Board* as a corporate body consisting of *seven members* as follows: -a Chairman, appointed after

consultation with the most representative organizations of trade unions and employers respectively.

-three members appointed by the Minister on the nomination of the most representative trade union organization;

-three members appointed by the Minister on the nomination of the most representative employer organization.

- in the same manner as members are appointed, other than the Chairman, the Minister appoints alternate members.

. • The Minister can revoke the appointments of any of the nominees of either the trade unions or employers' organizations on their respective nomination of other persons to replace such nominees.

. • The Minister is empowered to revoke the appointment of the Chairman if the Chairman indulges in any action that is inimical to the function of the Board, or if absent without the permission of the Board from three consecutive meetings.

. • The Secretary of the Board is a public officer appointed by the Minister.

. • The Act places a duty on the Minister to provide the Board with adequate resources to enable the Board to discharge its functions.

Meetings of the Board (Sec. 9)

. • The Board may meet as necessary or as expedient. The *quorum* required for Board meetings is the *Chairman and three other members*, including one representative each of the nominees of trade unions and employers.

. • In the event that two consecutive meetings fail to attract the requisite quorum, having been summoned *within ninety-six hours* for the next meeting, *any four members* shall constitute a quorum.

Certification of Recognition – Part III (Sec. 18)

. • A trade union is required to apply in writing to the Board to be certified as the *recognized majority union*. The union is also required, in its application, to describe the proposed bargaining unit.

. • The Board is required to determine the application within *two months* of the date of its receipt by the Board.

The Bargaining Unit (Sec. 19) The Board is empowered to determine *the appropriate bargaining unit*, taking into consideration, the following factors relating to the proposed bargaining unit:

. • The *community of interest* among the workers;

. • The *nature and scope* of their duties;

. • The *organizational structure of the employers' undertaking, and the views of the concerned trade union and employer*;

. • *Historical development of collective bargaining* in the enterprise;

. • Any other matters which the Board considers to be *relevant to the conduct of good industrial relations*.

Determination of a Recognized Majority Union (Sec. 20 & 21)

- . • Where only one union applies to be certified as the *recognized majority union*, the Board may determine the application on the basis of a *membership survey* to ascertain the extent of support which the union enjoys.
- . • The Board shall certify the union as the recognized majority union for the relevant bargaining unit if the survey results indicate that at least *forty percent* of those workers support the union.
- . • Where *two or more trade unions* have applied in relation to the same bargaining unit, the Board shall refer the applications to the attention of the most representative trade union organization for a resolution within *twenty-eight days*.
- . • Failing a resolution by the most representative trade union organization, the Board shall carry out a *secret poll* among the employees in the bargaining unit *and shall certify as the recognized majority union for the bargaining unit, the claimant union which is shown by the poll to have the greatest support among the workers*.
- . • No union, however, shall be certified if *fewer than forty percent* of the employees take part in the poll.
- . • Where a *certified union* is being challenged and the challenging union satisfies the Board, by means of a survey that the support of the challenging union is not less than forty percent, the Board shall conduct a poll, but *the Certificate of Recognition* of the challenged union shall not be cancelled where the challenging union fails to obtain a majority of at least forty percent amongst the workers in the bargaining unit.

Certificate of Recognition (Sec. 22)

- . • The Board shall issue a *Certificate of Recognition under its seal* to the trade union and the employer in every case in which it certifies a trade union as the *recognized majority union*.
- . • The Board shall issue a *Certificate of Recognition* to existing recognized unions at the establishment of the Board (1 May 1999) unless there is a pending challenge for recognition by another

union, in which case, a poll shall determine the issue
(Section 32).

Compulsory Recognition and Duty to Treat (Sec. 23)

- . • Where the Board certifies a trade union as the recognized majority union, the *employer shall recognize the union, and the union and the employer are obligated to bargain in good faith and enter into negotiations* with each other for the purpose of collective bargaining;

. • Failure or refusal on the part of either the trade union or the employer to comply with any of the above requirements (Section 23) constitutes an offence and liable on summary conviction to payment of fines.

.Effect of Certification (Secs. 27-28)

Where a trade union is certified as the recognized majority union:-

- . • such a trade union replaces any other trade union that was previously recognized, and has *exclusive authority* to enter into collective bargaining on behalf of employees in the relevant bargaining unit;
- . • the certificate of the previously recognized union is revoked in respect of

such employees;

- . • becomes a party where a collective agreement is in force in substitution for the displaced/derecognized trade union;
- . • such a trade union may submit to the employer proposals of the revision of, or a new collective bargaining agreement.

.Frequency of Application for Certification (Sec. 29)

No application for certification of recognition is entertained or proceeded with by the Board where:-

- . • there is a recognized majority union for the same bargaining unit described in the application.
- . • the application is made earlier than two years after the recognized majority union obtained certification, unless the Board approves otherwise; a trade union may appeal to the Minister if dissatisfied with this decision of the Board.
- . • a trade union fails to gain recognition or where its certificate of

recognition was cancelled, it must wait at least *twelve months* before re-applying.

Challenge for Continued Certification (Sec. 31) Should at least *forty per cent* of employees in a bargaining unit for which a union is certified so request, the Board shall conduct a poll to determine whether the union continues to be so certified.

The Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01)

provides for an *Arbitration Tribunal* for the settlement of disputes in public utility undertakings, and in certain other services.

Limitation of Industrial Action

The Public Utility Undertakings and Public Health Services Arbitration Act prohibits strikes and lockouts in such undertakings and services unless, certain procedures are followed in *trade disputes* in the following services and utilities as listed in the schedule to the Act:-

- . • all transport services of the Transport and Harbours Department;
- . • waterfront services in the shipping industry in the port of Georgetown;
- . • municipal services undertaken by the Georgetown City Council and the New Amsterdam Town Council;
- . • all services of the Georgetown Sewerage and Water Commissioners;
- . • the electricity supply services of the Guyana Electricity Corporation;
- . • all undertakings in connection with pumping installations used for drainage purposes;
- . • all services in connection with the public hospitals owned and operated by the Government;
- . • the electricity, water and fire-fighting services at Timehri Field, owned and operated by the Government;
- . • the cable and wireless services of Cable and Wireless (W.I.) Ltd.;
- . • the Government's telegraphic, telephonic and wireless services;
- . • the telecommunication services of the Guyana Telecommunication Corporation; and
- . • the services provided by the Guyana Airways Corporation.

Trade Dispute Procedure (Sec. 3) Trade disputes in any of the above services are to be reported to the Minister by any of the relevant employers' organization, employer or trade union on behalf of workers who are parties to the dispute. The dispute may also be reported to the Minister by any other organization not directly involved in negotiations in which the dispute exist or was apprehended.

- The Minister may:
 - if satisfied that *there is suitable machinery of negotiation or arbitration* for the settlement of the dispute, and that such machinery has not been exhausted, refer the matter for settlement to that machinery, or *refer the dispute to the Tribunal*, if not settled within ten days of such reference to such suitable machinery;
 - take such steps as are expedient to promote the settlement of the dispute or *may refer the matter for settlement by the Tribunal within one month* from the date on which the matter was first reported to him/her by any other organization not directly involved in the negotiations.

Arbitration Tribunal (Sec. 4-11)

- The Tribunal established under this Act is *the Public Utility and Public Health Services Arbitration Tribunal* (the Tribunal) consisting of the following *persons appointed by the Minister*: -three appointed members, one of whom shall be appointed as the Chairman; -two other members, one of whom shall be chosen to represent *employers* and the other to represent *employees*;
 - panels of persons* chosen to represent employers and employees respectively shall be constituted by the Minister after consultations with the relevant representative organizations. Members chosen to represent employers and employees at any sitting of the Tribunal shall be selected from these panels by the Minister;
 - members of the Tribunal hold office for two years and may be re-appointed; -the Secretary of the Tribunal is a public officer appointed by the Minister; -the employer and employee representatives and one other member constitute a quorum at any sitting of the Tribunal;
 - where the members of the Tribunal are evenly divided in respect of their decision, the *matter shall be disposed of as the Chairman or other member presiding shall determine*.
- The Tribunal may regulate its own proceedings.

Prohibition of Lockouts and Strikes (Sec. 12)

Strikes and lockouts are prohibited in connection with any trade dispute in the essential services unless:

- the dispute has been reported by a person or an organization not directly involved in the negotiation in which the dispute exists; • one month has elapsed since the date of the report; and
- the dispute has not during that time been referred by the Minister for settlement by the Tribunal.

Terms of Reference and Award (Sec. 13-14)

- The Minister determines the *terms of reference* for the Tribunal, and the Tribunal enquires into the matters referred to it and reports to the Minister.

- . • The Tribunal makes its awards and furnishes its advice as the case may be to the Minister without delay and where practicable within *twenty-one days* from the date of reference.
- . • Any *agreement, decision, or award* made under this Act shall be *binding* on employers and workers, and shall be an *implied term of the contract* between the employer and workers as applicable (Sec. 7).
- . • Expenses of the Tribunal are met by the State as authorized and approved by the Minister of Finance.

The Termination of Employment and Severance Pay Act, No. 19 of 1997

Termination of Employment and Severance Pay

Under Part III (Sec. 7) of the *Termination of Employment and Severance Pay Act*, a contract of employment *without term limit* may at any time be terminated:-

- by mutual consent of the parties;
- on any ground of redundancy which relates to operational requirements (Section 12);
- by either party: -for good and sufficient cause; or -by notice to the other party.

Unfair Dismissal (Sec. 8)

- The following reasons are *not valid or constitute good or sufficient cause* for dismissal or for disciplinary action against an employee:--race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, family responsibility or marital status; -pregnancy or reason connected with pregnancy or medically certified illness; -absence due to compulsory military service or any other civic obligations in accordance with any law; -participation in lawful or legitimate industrial action; -refusal to do any work normally done by an employee engaged in lawful or legitimate industrial action; and -complaint or participation in legal proceedings against an employer.
- . • A dismissal or disciplinary action is *unfair* if it is based on any of the above listed grounds or if the employer fails to give *written warning or suspension without pay* for misconduct that is not serious to warrant dismissal (Section 11 and 18).
- . • It also constitutes unfair dismissal if an employer under Sections 11 or 18 of this Act:--fails to give *written warnings* for any misconduct that is not

serious so as to attract dismissal, but may terminate the employment for the same or similar offence or misconduct in the following six months;

- terminates the employment of an employee for *unsatisfactory performance* unless the employer has given the employee instructions as to how the employee should perform his/her duties and a written warning to follow the employer's instructions and the employee continues to perform unsatisfactorily;
- dismisses an employee when it is reasonable for the employer to take other *disciplinary actions* instead, including in *order of severity* regard being had to the nature of the violation, employees' duties, nature of any damage, previous conduct and circumstances of the employee:-

- a written warning;
- suspension without pay.

- A complaint that *disciplinary action is unreasonable* may be made to the *Chief Labour Officer for determination* (Sec. 18).
- An employee has the *right to seek redress* from the *High Court* for *unfair dismissal or unfair disciplinary action* (Sec. 19).

Summary Dismissal (Sec. 10) An employer is entitled to *dismiss an employee without notice or payment of any severance or redundancy allowance or terminal benefit for a serious misconduct* which relates to the employment relations and has a detrimental effect on the employer's business.

Termination on grounds of Redundancy (Sec. 12)

- An employer may terminate the employment of employees as part of the *reduction of the workforce* on the grounds of *operational requirements* including:--modernization, automation or mechanization; -closure, sale or other disposition of part or whole of the business or re-organization for efficiency;
 - impossibility or impracticability to continue business on account of shortage of materials, mechanical breakdown, *force majeure* or natural disaster;
 - reduced operations on account of difficult economic and market conditions.
- The *employer is required*, before terminating employment for redundancy reasons, *to inform and consult the recognized trade union, the employees or their representatives and the Chief Labour Officer* as soon as possible, but not later than one month from the date of the existence of the circumstances giving rise to contemplated redundancy action. In informing these persons, the employer is required to provide all the relevant details, the reasons, circumstances, the affected workers and *follow the procedures and time lines* set by this Section.

Termination Notice (Sec. 15)

Where a contract of employment is being terminated for reasons of redundancy or by notice to the other party in keeping with Sec. 7:

- Two weeks' notice is required where the employee *has less than one year's service*; and *one month* for one year or more.
- An employee is also required to give corresponding notice to the employer where the employee terminates his employment contract.
- The parties can agree to longer periods of termination notice.
- An employer can waive the right to receive such notice.

Payment in lieu of Notice (Sec. 16)

In lieu of giving the required notice, the employer or employee is required to pay to the other party *a sum equal to the remuneration and benefits accrued* for the relevant period of notice.

Certificate of Termination (Sec. 17)

The employer is required to provide an employee with a Certificate of Termination upon his/her request.

Severance Pay – Part IV (Sec. 21)

- On termination by reason of redundancy or by reason of severance of employment, an employee with *one year or more years of continuous employment* with an employer, is entitled to be paid a *severance or redundancy allowance* equivalent to: -*One week's* wages for the *first five years* service; -*Two weeks'* wages for the *sixth to the tenth* year; and -*Three weeks'* wages in excess of ten years subject to a *maximum of fifty-two weeks*.
- Severance or redundancy allowance is *not applicable* where the employee:
 - unreasonably refuses* to accept another job offer by the employer at no less favourable conditions than those enjoyed prior to termination.

Prosecution by Chief Labour Officer (Sec. 22) The *Chief Labour Officer* may institute or cause to be instituted any prosecution for the purpose of enforcing this Act. Any Officer of the Department of Labour may appear *as prosecutor* for and on behalf of the Chief Labour Officer.

Prevention of Discrimination Act No. 26 of 1997

Protection Against Unlawful Discrimination

Under Part II (Section 4) the Act prohibits discrimination on the grounds of: *race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status, or age*

except for the purpose of retirement and restriction on work and employment of minors.

The Act also prohibits discrimination against a person by distinction, exclusion or preference, the intent of which is to deny equality of opportunity or treatment in any employment or occupation.

Protection Against Discrimination in Employment – Part III (Section 5)

It is unlawful for any employer or his/her agent to discriminate in relation to recruitment, selection, or employment on any grounds, except where genuine occupational qualifications exist, in keeping with the Act including discrimination:

- in advertisement of the job;
- in determining who should be offered employment;
- in terms and conditions offered;
- the creation, classification or abolition of jobs;
- by retrenching or dismissing the employee;
- in conditions or work or occupational safety and health measures; or
- by denying access, or limiting opportunities for advancement, promotion, transfer or training connected with employment.

Sexual harassment against an employee by an employer, managerial employee or a co-worker constitutes unlawful discrimination in line with Section 4 of this Act (Section 8).

Promotion of Equal Remuneration – Part IV and V

Employers are obligated to pay equal remuneration to men and women for work of equal value as defined in this Act (Section 9).

Professional Partnership and Trade Organizations

Discrimination is unlawful against anyone in a partnership firm, a trade union, an organization of employers or employees on any grounds set out in Section 4 above. This relates to who should be offered a position as partners, members, or denying, limiting access to benefits, facilities, and services or treating them unfairly or expelling them contrary to the provisions of this Act (Sections 10-11).

It is also unlawful for an education authority or body or association, employment agencies to discriminate against anyone on any grounds contrary to Section 4 of this Act (Sections 12-14).

Protection Against Discrimination in Other Areas – Part VI

It is unlawful for a person who provides goods and services to discriminate against anyone contrary to Section 4 of this Act. Discrimination by subterfuge, by advertised publishing or in application forms is unlawful (Sections 15-18).

General Exceptions Part VII

In keeping with the provisions of this part, charities and religious bodies (Sections 19 and 20) are exempted by virtue of the nature of the organizations.

It is unlawful under the Act to pressure, induce or attempt to induce anyone to discriminate, or for anyone to commit an act of victimization as defined by the Act on pain of penalty of a fine (Sections 21 and 22).

The Act further provides for the burden of proof, general penalty, supplemental remedies, and powers of the Minister to make regulations (Sections 23-27).

Occupational Safety and Health Act No. 32 of 1997

The Occupational Safety and Health (OSH) Act provides for the registration and regulation of industrial establishments and came into force on 15th September 1999 by order No. 15 of 1999 of the Minister. The Act applies to every industrial establishment (Section 3) and self-employed persons and persons engaged in homework (Section 5).

Registration of Industrial Establishments – Part II

The Act requires:

- every industrial establishment and person engaged in home work to be registered with the Authority which shall keep a register of industrial establishments (Section 6);
- every industrial establishment to be registered with the specified particulars within thirty days by application to the Authority in the prescribed form renewable annually (Section 7);

- . • all changes in particulars must also be registered within thirty days (Section 8); and
- . • the Authority to correct or amend and keep up-to-date the register (Section 9).

Administration – Part III (a) Government Advisory Council on OSH

The Act establishes the *Advisory Council on Occupational Safety and Health* (Advisory Council), consisting of not fewer than 12 or more than 24 members appointed by the Minister for such term as the Minister determines:

- . • members of the Advisory Council represents management, labour, technical or professional bodies or persons with knowledge of occupational safety, welfare and health.
- . • the Minister designates the chairman and vice-chairman from among the appointed members of the Advisory Council, and fills vacancies that occur.

The Advisory Council

The Advisory Council makes its own rules subject to the approval of the Minister.

The functions of the Advisory Council are:-

- . • to advise the Minister on matters relating to OSH or arising out of the operations of the Act;
 - . • to advise the Minister on the formulation of a national policy on OSH;
 - . • to make recommendations to the Minister relating to the programme of work of the Authority in OSH including enforcement and the implementation of a national policy on OSH;
 - . • to promote public awareness of OSH; and
- *to present an annual report of its work to the Minister by the 1st June each year.*

The Advisory committee may establish committees to assist it in its functions under the chair of one of the members of the Advisory Council (Sections 10 and 11).

OSH Authority

- . • The Act establishes the *OSH Authority* comprising of such officers as may be designated by the Minister by notice published in the Gazette;
- . • *where no such authority is established, the Chief OSH Officer shall be the Authority;*
- . • all industrial establishments and all machinery shall be inspected by the Authority, or by an inspector on the directions of the Authority;
- . • the Minister may make regulations for the inspections of industrial establishments and machinery;
- . • the Minister designates the inspectors (Section 12); and
- . • every inspector shall be furnished with a prescribed certificate of appointment (Section 14).

Power of the Authority and of an Inspector

The Authority and every inspector have powers including:

- . • to enter, inspect and examine industrial establishments or places believed to be industrial establishments at any hour by day or night;
- . • to enter, inspect and examine any place that is believed to be storage of explosives or highly flammable materials;
- . • to enter ships or vessels in any dock or harbour, any wharf, quay or stelling and make such inspection and examination as he/she may deem fit;
- . • to require the production, of registers, certificates, and to inspect, examine and copy any of them, or remove them to make copies or extracts;
- . • to make such examination, inquiry, or test necessary on any aspect of the establishment, equipment, machine, device, article, material, chemical, physical agent or biological agent, and require any test to be conducted or taken by qualified persons at the expense of the employer;
- . • to be assisted by persons with special expertise or professional knowledge;
- . • to require information, and to interview relevant persons alone or in the presence of others and to require such persons providing or from whom information has been obtained *to sign a declaration of truth*, provided that no person shall be required under this paragraph to answer any question, or to give any incriminating evidence (Section 13);
- . • to require a certificate of fitness of any young person (Section 17).

Medical Inspector – Appointment, Powers and Duties

In keeping with this Act:-

- . • the Minister may, by notice published in the Gazette, designate a sufficient number of registered medical practitioners to be *medical inspectors* for any of the purposes of this Act;
- . • where there is no medical inspector for an establishment, the *Government medical officer* for the relevant district shall be the medical inspector;
- . • the medical inspector has powers to inspect the general register and to investigate and report on any case of death, injury or any case of occupational disease.
- . • the medical inspector under this section has all the powers of an inspector; and
- . • the Minister may direct that regulations be made regarding the functions and duties of the medical inspector (Sections 15 and 16).

Periodic Reports

Every medical inspector is required to make an *annual report in the prescribed form to the Authority* as to the examination made or other duties performed under this Act (Section 19).

Technical Examiners

The Minister may appoint suitably qualified *technical persons* to examine equipment, drawings, plans or specifications of any work place (Section 20).

OSH Commissioner

The Minister may appoint an *OSH Commissioner* to carry out the duties and to *exercise the power of an arbitration tribunal* in relation to procedural matters as directed by the Minister in keeping with this Act (Section 21).

(b) Non-Governmental – Safety and Health Representative

At construction sites with fewer than 20 and more than 5 employees, the employer is required to have workers select at least one *safety and health representative* from among non-managerial employees: Where there are trade unions representing workers, the selection of a safety and health representative may be delegated by a majority of the workers to the trade union(s).

The employer and workers are required to provide the safety and health representative with relevant information to enable the representative to carry out inspections of the work place.

The safety and health representative has the power:-

- . • to identify sources of danger or hazard to workers and to make recommendations to the employer, the workers, and the trade union(s) representing the workers;
- . • to obtain pertinent information and conduct appropriate tests for the purpose of OSH;
- . • to be consulted, and be present at testing and ensuring that valid testing procedures are used; and
- . • to obtain information from the employer concerning the identification of potential hazard of materials, processes or equipment in his or other similar work places or other industries (Section 22).

Joint Workplace Safety and Health Committee

The Act requires a *joint workplace safety and health committee of four to six persons* at workplaces with twenty and more workers with the power to:

- . • identify situations that may be a source of danger or hazard to workers;
 - . • make recommendations to the employer and the workers for the improvement of the health and welfare of workers;
 - . • recommend the establishment, maintenance and monitoring of programmes, measures, and procedures on safety for workers;
 - . • identify potential or existing hazards of materials, processes, or equipment at the work place or at similar or other industries of which the employer has knowledge; and
- obtain relevant technical information, conducting or taking tests, and to be consulted, and be present at testing to ensure that valid procedures are used to produce valid results.

Where a dispute arises, the dispute shall be decided by the Commissioner after consulting the employer and the workers or trade union(s) representing workers in keeping with this Section of the Act (Section 23). The Act provides for *workers trades committee* selected by the workers or the trade union:

- . • at construction sites with fewer than fifty workers, and which is expected to last less than three months;
- . • to represent workers in each of the trades at the workplace; and
- . • to inform the Committee at the workplace of the safety and health concerns of the workers employed in the trades of the workplace of the safety and health concerns of the workers employed in the trades of the workplace (Section 24).

Consultation on Industrial Hygiene Testing

The employer is obligated to provide information to a *designated safety and health representative of the committee* on proposed testing strategies for investigating industrial hygiene at the workplace.

(c) Provision Applicable to Inspectors Representative during Inspections

On an inspection visit by an inspector under the power conferred by Section 13 of this Act, employers shall afford and facilitate a committee member representing workers or a safety and health representative or a trade union selected worker, the opportunity to accompany the inspector during his/her physical inspection of a workplace or any part of the workplace (section 27).

An inspector:

- may in writing direct a safety representative or a member designated from the joint workplace safety and health committee, to inspect the physical condition of the workplace;
- without a warrant or court order, may seize any article or document if the inspector believes that this Act or regulation has been contravened and that the article or document will afford evidence of the contravention;
- in the event of a contravention of this Act or the regulations, may order the owner, employer, or person in charge to comply with the law immediately or within a specified period (Section 30);
- may order that the workplace, where the contravention exists, be cleared of workers and isolated by barricades, fencing or other means, to prevent access by a worker until the danger or hazard to the safety or health is removed (Section 30 (6) (c)).

No Entry to Barricaded Area

No owner, employer or supervisor shall require or permit a worker to enter the workplace except for the purpose of doing work that is necessary or required to remove the danger of a hazard and only where the worker is protected from the danger or hazard (Section 31).

Notice of Compliance

Upon full compliance with the inspectors' order, the employer within three days shall submit a *notice of compliance to the Authority* in keeping with the requirements of this Section (Section 32).

If an order of the inspector under Section 30 (6) is contravened, the Authority may apply to the high court to restrain such contravention (Section 33.).

Appeal from the Order of an Inspector

- an appeal against the order of an inspector may, within seven days, be made to the Minister; and
- the Minister determines the appeal or directs that the Commissioner determine the appeal on his/her behalf in keeping with the requirements of this Section (Section 34).

No person shall hinder, obstruct, molest or interfere with an inspector in the exercise of a power or performance of a duty under this Act or regulation (Section 35).

Any information, materials statement, report or result of any examination, test or enquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or regulation are absolutely confidential and can only be used for the purpose of this Act and regulations (Section 36).

7. Grenada

Employment Act No. 14 of 1999

The *Employment Act*, which came into force on 17 April 2000, repeals several labour legislation, and deals with individual employment and labour administration matters.

Labour Department (Sec. 6 – 7)

- . • The Act establishes the Department of Labour *under the authority of the Minister*, to administer and carry out the functions under this act;
- . • The Minister may delegate any power authorized by this Act; and
- . • The Act also provides for:

- a Labour Commissioner, a Deputy Labour Commissioner and staff under the direction and control of the Labour Commissioner;
- other consultants and advisors; -the staff of the Department of Labour appointed by the *Public Service Commission*.

Responsibilities of the Labour Commissioner (Sec. 8)

- The Labour Commissioner is the *chief advisor* to the Minister on all labour matters and is responsible for the administration of the labour department and the enforcement of this act. Specifically, the Labour Commissioner is responsible for: -promoting the settlement of any differences between employers and employees -advising the Minister on all labour matters and on measures to improve industrial relations
 - promoting tripartism and collective bargaining -supervising a programme of work for the inspection of places of work for labour law enforcement purposes; -overseeing the employment agency; -preparing and publishing an annual report on the work of the Department of Labour, including the work of the inspection services, legislation and detailed labour statistics (Sec. 15) -making recommendations to the Minister for the promotion of good industrial relations policies and practices;
 - receiving and reviewing periodic reports from officers on the results of inspection visits, as required by the Labour Commissioner, and in keeping with this Act.
- The Labour Commissioner may institute or cause to be instituted any prosecution for the purposes of enforcing this Act

Powers of officers (Sec. 10)

The powers of Labour Officers are similar to the powers of Labour Officers in the other Caribbean countries including Barbados, Guyana, Jamaica, Dominica and Belize.

Duty to notify (Sec. 11)

The law requires labour officers, when on an inspection visit, to notify the employer or his/her representative of their presence, unless such notification may prejudice the performance of their duties.

Labour Advisory Board (Sec. 17 – 18)

- The Act empowers the Minister to appoint a *Labour Advisory Board* (Board) consisting of -three persons selected by the Minister -three persons nominated by the most representative

organization of workers; and

-three persons nominated by the most representative organization of employers.

- The Labour Commissioner is one of the government's representatives and serves as *Chairperson, ex-officio*; while an officer of the Department of Labour serves as Secretary to the Board.

- Members of the Board serve for a term of two years and are eligible for re-appointment.

Functions of the Board (Sec. 21)

The Board advises the Minister on all labour matters including: -the formulation and implementation of national policies on basic conditions of employment as well as on health, environment and safety and welfare at work; -collective bargaining; -labour legislation; and -a review of the operation and enforcement of this Act, and the Labour Relations Act, 1999.

- The law requires that the Board be consulted on matters concerning the activities of the International Labour Organization, in keeping with C144 on Tripartite Consultation (International Labour Standards) and, specifically on:
 - Government's response to ILO's requests and questionnaires;
 - recommendations on the submission of ILO instruments to the competent authority in keeping with article 19 of the ILO Constitution;
 - the re-examination of unratified conventions periodically for possible ratification; -questions arising out of reports to be made to the ILO under article 22 of the Constitution of the ILO. -proposals for the denunciation of ratified conventions.

Meetings of the Board (Sec. 22)

- The Board is required to meet at least once per quarter. It regulates its own procedures.

- Five members constitute a quorum at meetings at which at least one worker and one employer representative must be included.

- Where a meeting of the Board is *not properly constituted due to lack of a quorum*, the subsequent meeting shall be deemed to be properly constituted even in the absence of a quorum.

Fundamental Principles (Part IV: Sec. 25 – 27)

- The Act expressly prohibits *forced labour*: "No person shall be required to perform forced labour."

. • *Discrimination* is also prohibited. The Act outlaws discrimination against any employee on the grounds of *race, colour, national extraction, social origin, religion, political opinion, sex, marital*

status, family responsibilities, age or disability, in respect of recruitment, training, promotion, terms and conditions of employment, or other matters arising out of the employment relationship.

. • The principles of *equal pay for work of equal value* are enshrined in this Act: “Every employer shall pay male and female employees equal remuneration for work of equal value”. (Sec. 32)

. • Prohibition of Child Labour (Section 32) - no person under the age of sixteen years shall be employed or allowed to be employed to work in any public or private agricultural, industrial or nonindustrial undertaking, or to work on any vessels.

These fundamental principles are in line with ILO Conventions and other international instruments.

Breaches of these fundamental rights are offences under this Act, (Sec.25–35) and punishable under summary conviction to a fine, not exceeding ten thousand dollars or to imprisonment up to three years or to both a fine and imprisonment.

Remedies for Infringement of Rights (Sec. 28)

. • A person claiming infringement of his rights in part IV of this Act may seek redress in the *High Court*.

. • The High Court may make such *order as may be necessary to ensure compliance* with this part of the Act.

Contracts of Employment (Part V: Sec. 29)

. • Contracts of employment include a contract for: -an unspecified period; -a specified period; or -a specific task.

. • A contract for an unspecified period may be terminated by either party in keeping with this Act.

. • Part V of the Act provides for probationary periods where it is unspecified in the contract -not more than one month for unskilled workers; -three months for other workers, but may be extended by the

terms of the collective agreement.

Particulars of Employment (Sec. 30) An employer is required to give each employee a written, detailed statement of particulars of employment similar to the requirements in Antigua & Barbuda’s Labour Code and Dominica’s Industrial Relations Act.

Discipline and Termination of Employment (Part IX: Sec. 73)

. • An employer is entitled to impose disciplinary action including dismissal when it is *reasonable to do so in all the circumstances*.

. • The following deliberations are made in any reviews by any authority: deciding whether the employer has acted reasonably, the *nature of the violation*, the *employee’s duties*, the *penalty imposed*, the procedure followed, the *nature of any damage incurred*, and the *previous conduct and circumstances* of the employees.

. • *Disciplinary action* includes -verbal warning; -written warning; -suspension; -demotion; or -dismissal.

- A complaint that disciplinary action is unreasonable is made to the Labour Commissioner, and *if necessary* to the Minister.
- Should the Labour Commissioner and the Minister fail to settle the matter, it may be referred to the *Arbitration Tribunal* for final decision.

Justification for dismissal (Sec. 74) In line with *C.158 on Termination on the initiative of the Employer*, termination is permitted for a valid reason connected with the capacity or conduct of the employee, or based on the operational requirements of the enterprise, or breach of contract of employment or disciplinary rules.

Non-valid reasons or *unfair dismissal* as listed in C.158 are enshrined in this section and are similar to those listed in the Labour Code of Antigua & Barbuda, the Industrial Relations Act in Dominica and the Termination Act of Guyana.

Notice of Termination (Sec. 75)

- A contract of service for unlimited time may be terminated by the employer after the probationary period, upon giving in writing the minimum period of notice: *-one day* for employment for less than one month; *-one week* for one month or more but less than three months employment; *-two weeks* for three months or more but less than one year employment; *-one month* for one year or more, but less than five years employment; and *-two months* for five years or more employment.
- *An employee* is required to give minimum notice as follows: *-two weeks'* notice for three months to one year employment; *-one month* for employment of one year or more.
- The parties can, however, agree to a longer period of termination or an employer can waive the right to receive notice.

Unfair and Summary Dismissal (Sec.76 – 77)

- A dismissal is unfair if it is not in conformity with valid reasons (Sec. 74 above) or constructive dismissal (Sec. 80 following).
- An employee may be dismissed without notice for *serious misconduct of such a nature that it would be unreasonable to require the employer to retain the employee*.

Certificate of Termination

- On termination of a contract of employment, the employer provides, upon the employee's request, a certificate with factual details as listed in this section.
- The certificate does not contain any evaluation of the employee's work unless so requested by the employee.

Payment in lieu of notice (Sec. 79)

- In lieu of providing *notice of termination*:
 - the employer pays to the employee a sum equal to the wages and other remuneration and benefits for the required period of notice;
 - where the employee terminates a contract without required notice, the employee is only entitled to accrued benefits at the date of termination.

Constructive Dismissal (Sec. 80)

- An employee is entitled to terminate a contract of employment *without notice* or with less notice *where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship*.

. • Where the employee, because of the employer's conduct terminates the contract of employment, *the employee is deemed to have been unfairly dismissed*.

Proof of Reason for Dismissal (Sec. 81)

. • The onus of proof rests with the employer to establish reasons for dismissal; and *if the employer fails to do so there shall be a conclusive presumption that the dismissal is unfair*.

. • The employer must show that he/she has acted with *justice* and *equity* in dismissing the employee, or that the continuation of the employment relationship is unreasonable.

Complaints of unfair dismissal (Sec. 82 – 83)

. • An employee may complain to the Labour Commissioner within three months of dismissal that he/she has been unfairly dismissed.

. • Where the Labour Commissioner fails to settle the matter, it is referred to the Minister for settlement.

. • Where the Minister fails to settle the matter, it may be referred to an *Arbitration Tribunal* (Tribunal).

. • The Arbitration Tribunal hears and determines the *complaint of unfair dismissal* and the Tribunal may award, in keeping with the wishes of the employee and the circumstances of each case: -an order for reinstatement; or -re-engagement in comparable work; or -compensation of such amount as the Tribunal considers *just and equitable*.

. • Where the employee caused or contributed to the dismissal, the Tribunal may include a disciplinary penalty as a term of the order for re-instatement or re-engagement.

Other provisions in this Act

This act also provides for the protection, regulation and procedures for:

- . • hours of work and continuity of employment;
- . • wages;
- . • leave entitlements;
- . • pregnancy and maternity protection rights, privileges and entitlements; and
- . • termination allowance by reason of insolvency.

Complaints Procedure (Sec. 89)

Any person alleging a violation of this Act may report the matter to the Labour Commissioner, who may institute or cause to be instituted a prosecution to enforce the law.

Regulations (Sec. 90)

The Minister may, after consultation with the Labour Advisory Board, make regulations prescribing *anything that is required or necessary to give effect to this legislation*

Labour Relations Act No. 15 of 1999

This Labour Relations Act 1999 which came into force on 17 April 2000, deals with matters connected with labour relations.

Registration of Trade Unions and Employers' Organizations;

(Part II – Sec. 4 – 8)

. • The Act requires the registration of trade unions and employers' organizations to be done in accordance with the requirements and procedures of this Act to enable them to function.

. • Any *twenty-five or more persons*, by subscribing their names to the constitution and complying with other requirements of this law, may register the trade union with the Registrar.

. • Any ten or more members of employers' organization may similarly register the Employers' Organization with the Registrar.

. • The Minister appoints the *Registrar of Trade Unions and Employers' Organizations* (Registrar) after consultation with the Labour Advisory Board.

. • All organizations previously registered before the commencement of this act are deemed to be duly registered.

. • An appeal lies in the High Court should the Registrar fail or refuse

to register an organization, and the *decision of the High Court is final*.

Freedom of Association (Part V - Section 25 – 31)

In line with C87 - Freedom of Association and the right to organize:

. • Every employee has the fundamental human right of freedom of association in relation to trade union membership and lawful trade union activities and holding office. These rights are protected from interference, threats and any form of discrimination from public authorities and employers.

. • Employers' rights in relation to the formation, participation and lawful activities are similarly protected.

. • Individual member's rights to membership and to fully participate in the employers' and trade unions' organizations are fully protected.

. • The organizations have a right to join a federation of trade unions or employers' organizations.

. • They also have the right to affiliate and participate in the affairs of international workers' or employers' organizations.

. • Any infringements of the above rights on freedom of association may by presented to the High Court for determination.

Exclusive Bargaining Rights (Part VI: Sec. 33 – 34)

. • All existing trade unions which were certified as bargaining agents immediately before this Act came into force (17 April 2000) are deemed to be certified as exclusive bargaining agents for employees in respective bargaining units.

. • A trade union applies to the Minister to be certified as the *exclusive bargaining agent* for employees in respective bargaining units, providing such particulars in keeping with the law.

. • An application to be certified as an exclusive bargaining agent can be made at any time, where there is no collective agreement and where no union has been certified.

. • Where no agreement is in force but a bargaining agent has been certified, the application may be made after twelve months from the date of such certification.

. • Where a collective agreement is in force, the application may be made during the last two months of the term of the agreement.

Appropriateness of the Bargaining Units (Sec. 35)

- On receipt of an application for certification, the Labour Commissioner first determines the appropriate bargaining unit, taking into account the:
 - community of interest among the employees in the proposed bargaining unit; -nature and scope of duties exercised -the views of the concerned employer and trade union as to the appropriateness of the bargaining unit.
- The Commissioner is empowered to include additional employees in or exclude employees from the bargaining unit.

Granting or refusing certification (Sec. 36)

- Within fourteen days the Minister either: -refuses to certify the trade union for *inappropriateness of the bargaining unit*, and informs all interested parties accordingly;
- institutes a poll of the bargaining unit specified by secret ballot to determine whether the *majority of the employees* in the bargaining unit wish to have the trade union certified *as their sole and exclusive bargaining agent*.
- the Minister certifies the trade union gaining the requisite majority as the bargaining agent, and informs all interested parties accordingly. -an unsuccessful trade union may apply to the same employer in respect of the same or substantially the same bargaining unit after *ninety days*.

Direct effect of certification (Sec. 37)

- Upon certification as the exclusive bargaining agent, a trade union so certified under this act: -replaces any other trade union and has exclusive collective bargaining rights;
- is substituted as a party to any applicable collective agreement.
- The certification of the previously entitled trade union is deemed revoked.

Appeal to High Court on poll (Sec. 39)

- Where a trade union or employer is dissatisfied with the conduct of a poll, either party may appeal to the High Court for a hearing and determination of the matter. In line with this section:
 - a decision of the High Court is final;
 - in making a determination, the High Court endeavours to promote a system of orderly and effective collective bargaining.

Revocation of exclusive bargaining rights (Sec. 38)

- Anytime after one year, an employee in the bargaining unit may apply to the Minister for withdrawal of the certificate on the grounds that a majority of the workers in the bargaining unit no longer wish to have the trade union as their exclusive bargaining agent.
- Such an application must be supported with evidence by at least sixty-percent of the concerned employees.

- . • The Minister conducts a *representation vote* of the concerned employees.
- . • The Minister is also empowered to refuse the application *unless sixty percent* of those employees vote against the union, in which case the Minister *cancels* the certification of the trade union.
- . • If the application of cancellation of the certification is refused, a further application for *de-certification* can only be made after twelve months.

Obligations on certification (Part VII: Sec. 40 – 41)

- . • Upon certification as the exclusive bargaining agent, this act requires the union: -to provide *full and proper representation* of the interests of all employees.
- . • Any employee in the bargaining unit may apply to the High Court for an order directing the trade union to comply with the obligation to provide full and proper representation.

Duty to negotiate in good faith

- . • Employees' or employers' organizations are required to *bargain in good faith*, as in Trinidad and Tobago and to make every reasonable effort to reach an agreement.
- . • Any person affected by a refusal to bargain in good faith may apply to the High Court, and the High Court may make any order it deems necessary to ensure compliance.

Collective agreements (Sec. 44) A collective agreement shall:

- . • be in writing and signed by the parties;
- . • contain its effective date;
- . • contain *procedures for the avoidance* and settlement of disputes which procedures must include a reference of any dispute to *conciliation, mediation*, or arbitration as in the Bahamas, Saint Lucia and Jamaica;
- . • provide for the settlement of differences arising out of interpretation, application and administration of the agreement; and
- . • be filed with the Labour Commissioner.

Disputes Procedures (Part VIII: Sec. 45-46)

- . • A trade dispute may be reported to the Minister by or on behalf of the party to the dispute, or with the consent of the parties *by the Labour Commissioner in his/her own discretion*.
- . • The Minister is empowered to take any expedient steps for promoting a settlement.
- . • The Minister may, with the consent of all the parties to the dispute, refer the matter for settlement to an *Arbitration Tribunal*.
- . • The Minister is empowered, with or without the consent of the parties, to refer a trade dispute for settlement to an Arbitration Tribunal constituted either as: -a sole arbitrator appointed by the Minister, -an arbitrator and one or more assessors, equally nominated

to represent the concerned employees and employers, all appointed by the Minister, *provided the Arbitrator makes the award*.
 -one or more arbitrators equally nominated to represent the concerned employers

- and employees, and an independent Chairman all appointed by the Minister.
- where all the members of the Tribunal are unable to agree as to their award, the matter is decided by the Chairman as sole arbitrator.
- Where the parties mutually agree with the reference to Arbitration, the terms of reference and the composition of the Tribunal may be settled by the parties. (Similar provisions as above exist in the legislation of Belize, Saint Lucia, St. Vincent and the Grenadines and St. Kitts and Nevis).
- Where the parties to a trade dispute in an *essential service* do not consent to Arbitration or its terms of reference or composition, the Minister is empowered to settle the terms of reference and the composition of an Arbitration Tribunal at his own discretion.
- The Minister is empowered to stipulate that the award of an Arbitration Tribunal in an essential service is final and binding upon the parties to the dispute - employers and employees, and all are required to comply fully and faithfully with all the terms and conditions of the award. (Sec. 49)
- The *essential services* as listed in the second schedule are: -Electricity -Water -Public health protection services including sanitation -Hospital -Airport -Seaport and Dock services including Pilotage -Fire -Air traffic Control -Telephones, telegraph and overseas telecommunications -Prisons -Police
- The award of the Tribunal is submitted to the Minister for publication.
- Final and binding awards are enforceable by a civil suit in the High Court by any concerned employee.

Appeal on a Point of Law (Sec. 62)

- Where the Tribunal makes an award that is final and binding, any party to the dispute may appeal to the High Court against the award *on any question of law*, -but no appeal lies against the award on any question of fact.
- A further Appeal lies to the *Court of Appeal* only on a question of law raised before the High Court.

Prohibition of Industrial Action (Sec. 50)

- So long as an *essential service* dispute is before the Tribunal and until its award is published, no industrial action regarding the dispute before the Tribunal shall be taken or continue or ordered by employers or employees concerned or by any other person or organization unless, no award is published within sixty days of the matter being reported to the Minister and an additional 28 days as may be fixed by the Minister.
- No solidarity actions are permitted in the essential services.

Some other provisions

The Labour Relations Act also provides for the protection, regulations and procedures for:

- the registration of employers' and workers' organizations;
- particulars, documentation for certification; cancellation of registration;
- the status of registered organizations – their rights and responsibilities;
- special requirements for registered organizations – their constitutions, proper conduct or elections, rendering a true and accurate financial account to the Registrar;
- access to employers' premises;
- deductions of trade union subscription and/or service contribution (agency fee);
- penalties, fines and/or imprisonment for breaches;

- . • peaceful picketing and prevention of intimidation;
- . • refusal to do strikers' jobs;
- . • right to return to work after lawful strike action;
- . • protection of trade unions and members from conspiracy or for breach of contract in contemplation or furthermore of a trade dispute; and
- . • intimidation or annoyance.

Rules and regulations (Sec. 71) The Minister may make rules and regulations generally with *respect to registration* under this Act, in addition to the requirements listed in this section.

8. Belize

The Labour Act, (Chapter 297 – Aug. 1960)

The Labour Department Appointments (Sec. 3)

This law provides for the appointment of a Labour Commissioner, Labour Inspectors and Labour Officers.

Duties of the Labour Commissioner (Sec. 4)

Subject to the directions of the Minister, it is the duty of the Labour Commissioner to:

- . • receive and review all representations with a view to *settlement*;
- . • conciliate in disputes and grievances;
- . • *advise* the Minister on *measures to improve industrial relations* and on all labour matters;
- . • ensure the enforcement of this law and other labour laws;
- . • *collect, analyse, and publish information on labour market information* and labour-related matters;
- . • foster development of trade unionism and collective bargaining; and
- . • advise trade unions and employers of new methods and needs in industrial relations, organization and practice.

Supply of Information (Sec. 5) This law requires every employer to furnish to the Labour Commissioner, at such time or times as he/she may require, a return with personnel information he/she may require.

Institution of Proceedings (Sec. 7)

A labour officer may institute proceedings and appear:

- . • against an employer for any offence committed under this law and *prosecute in his own name*;
- . • in such proceedings on behalf of any worker against his employer relating to the employee's employment under this law.

Labour Inspection (Sec. 8-10) *Labour inspection duties are performed by any labour officer* in relation to general labour (social) and Occupational Safety and Health

(technical).

Each labour officer is empowered to:

- . • enter freely and without previous notice, at any hour of the day or night, places of employment and inspect such places;
- . • carry out any examination, test or any necessary inquiry;
- . • interview persons – witnesses, employers and employees concerning the application of any employment laws;
- . • require the production of books, registers or other documents in keeping with the law;
- . • enforce the posting of statutory notices; and
- . • take or remove samples of materials and substances used in the workplace for analysis.

The Labour officer may notify the employer or his/her representative of the inspection visit (Sec. 11).

Labour Advisory Board (Sec. 19-23)

. • The Act establishes a *Labour Advisory Board* (Board), appointed by the Minister. The Board consists of *-three* persons representing employers; *-three* persons representing workers; and *-three* persons representing the *public interest*.

. • The Minister consults the organizations representing workers and employers before appointments are made to the Board of persons representing their interests.

. • The duty of the Board is to *study and make recommendations to the Minister on all matters affecting workers*.

. • The Chairman and Deputy Chairman are appointed by the Minister

from the persons representing the public interest.

. • An officer of the Labour Department serves as Secretary at all meetings of the Board.

. • The Labour Commissioner or his representative attends and participates in all meetings but has no voting right.

Contracts of Services Generally (Sec. 26)

. • The Law stipulates that *contracts of service* may be: *-expressed or implied; -oral or written; -individual or collective; and -for a definite or indefinite period*.

. • The Act also provides detailed regulation for the different types of contracts of service in parts V, VI and VII.

Freedom of Association (Sec. 30) The Act protects the right of employees to be members of a registered trade union, and to exercise all legitimate rights in relation to full participation in trade union activities.

Manpower Information (Sec. 82) The Labour Commissioner is responsible for collecting, analyzing and making available, *information regarding the employment market situation through published reports or other means*.

Advisory Committees (Sec. 83)

. • The Minister may appoint *advisory committees* for assuring the

cooperation of employers' and workers' representatives in matters pertaining to the organization and operations of employment services.

- Equal number of representatives of employers and workers are appointed on such committees after consultation with employers' and workers' organizations.

Forced Labour (Sec. 158)

This Act expressly prohibits forced labour. It is unlawful for anyone to impose or permit the imposition of forced labour as a means of:

- political coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established

political, social or economic system;

- using labour for economic development;
- labour discipline;
- punishment for participating in strikes; and
- racial, social, national, or religious discrimination.

Severance Pay (Sec. 183)

- A worker who has *a minimum of ten years or more continuous* employment, who resigns, retires on or after sixty years, or on medical grounds, is entitled to: -severance pay of *one week's wages* in respect of each year of service.
- Where a worker has *five or more years of continuous service is terminated on the grounds of redundancy*: -the employer is required to pay the worker a *severance pay of one week's pay* in respect of each year of continuous service.

Coverage of other labour conditions

The Act provides also for the protection, procedures, requirements and regulation in respect of:

- oral contracts of service;
- written contracts of service;
- recruiting to obtain or supply, or attempt to obtain and supply labour;
- employment services/offices;
- protection of wages to be paid in legal tender;
- hours of work, overtime and holidays;
- labour clauses in public government contracts;
- safety, health and housing;
- employment of women and children; and
- maternity protection.

Settlement of Disputes in Essential Services Act:

(Chapter 298)

Arbitration Tribunal (Sec. 4)

The Act empowers the Minister to appoint an *Essential Services Arbitration Tribunal* (the Tribunal) to settle unresolved trade disputes

in the following essential services:

- airports (Civil Aviation and Airports Security);

- . • electricity;
- . • health;
- . • monetary and financial services (Banks, Treasury, Central Bank of Belize);
- . • the national fire service;
- . • port authority;
- . • postal;
- . • sanitary;
- . • the social security scheme;
- . • telecommunications;
- . • telephone;
- . • water; and
- . • services in connection with petroleum products.

Composition of Tribunal (Sec. 5)

- . • The Tribunal consists of the following persons appointed by the Minister:
 - Three appointed members;
 - One member to represent employers;
 - One member to represent workers.

. • The Minister also appoints one of the three appointed members to be Chairman of the Tribunal.

Panels for selection of members (Sec. 6)

- . • The Minister appoints panels of persons to represent employers and workers respectively, after consultation with representatives of employers and workers organizations; and
- . • Members chosen to represent employers and workers at any sitting of the Tribunal are selected by the Minister from the panels.

Term of Office (Sec. 7-8) The Minister:

- . • determines the term of office of members of the Tribunal;
- . • appoints a Secretary to the Tribunal and other staff.

Quorum and Proceedings (Sec. 9-10)

- . • The quorum for a sitting of the Tribunal consists of:
 - one appointed member;
 - one member representing the employers; and
 - one member representing workers.
- . • The Tribunal may regulate its own procedures and proceedings.

Trade Disputes (Sec. 11-12)

- . • An unresolved trade dispute may be reported to the Minister by or on behalf of either party to the dispute.

. • The Minister may: -refer the dispute back to the parties to exhaust their own procedures for settling the matter; -refer the dispute to the Tribunal; -take any expedient steps to promote a settlement; -where other steps fail to resolve the dispute refer the dispute to the Tribunal within twenty-one days on which the dispute was reported to him/her.

- In the event of a disagreement among the members of the Tribunal: -the agreement, decision or award of the Tribunal is made on the basis of a *majority vote*; -in the case of an equality of votes, the *Chairman casts the deciding vote*.
- Any agreement, decision or award of the Tribunal *is binding on employers and workers*, and constitutes an *implied term* of the contract between the concerned employers and workers.
- The Minister may seek the advice of the Tribunal on any matter connected with any trade dispute.
- The Tribunal makes its award or furnishes its advice without delay and where practical, within twenty-one days of reference.

Prohibition of strikes and lockouts (Sec. 15)

- It is unlawful for: -employers to declare a lockout; or -workers to resort to strike action, *unless* the dispute has been reported to the Minister and twenty-one days have elapsed, and the dispute has not been referred to the Tribunal by the Minister.
- Any breach of this section attracts the penalty of fine or/and imprisonment provided that the *Director of Public Prosecutions consents* to the institution of prosecution for any contravention.

Trade Disputes (Arbitration and Inquiry) Act: Chapter 299

Report of Trade Dispute (Sec. 4-8)

As is the case of Barbados, Saint Lucia, St. Vincent and the Grenadines and St. Kitts and Nevis, the following provisions obtain:

- A trade dispute may be reported to the Minister by or on behalf of either party to the dispute, and the Minister may take such steps as are expedient for promoting a settlement.
- With the consent of both parties, the Minister may refer the dispute for settlement by an *Arbitration Tribunal* constituted of either: -a *sole arbitrator* appointed by the Minister; -an *arbitrator, assisted by one or more assessors* nominated

by or on behalf of the employers concerned, and an equal number of assessors nominated by or on behalf of workers concerned, all appointed by the Minister. *The award is made and issued by the arbitrator only; or*

- *one or more arbitrators nominated* by or on behalf of employers concerned, and an equal number of arbitrators nominated by or on behalf of workers concerned, and an *independent Chairman*, all of whom are appointed by the Minister. Should all the members of the Tribunal fail to agree as to their award, the *matter is determined by the Chairman as the sole arbitrator*.
- The Minister only refers a matter for settlement by arbitration as outlined above when the Minister is satisfied that the parties cannot resolve the dispute through their own *bilateral procedures for negotiation, conciliation or arbitration*.
- Where a dispute involves the question of *wages, hours of work, or other terms and conditions which are regulated by other labour laws*, the *Tribunal shall not make any award which is inconsistent with such laws*.

- The Tribunal's award is submitted to the Minister who is required to publish it within thirty days.
- Any matters of interpretation of an award is referred back to the Tribunal for a decision.

Board of Inquiry (Sec. 9-10)

- The Minister may refer any matter appearing to be connected with or relevant to a dispute to a *Board of Inquiry* (Board) appointed by the Minister to inquire into the dispute.
- The Minister may also refer any matter connected with *the economic or industrial conditions in Belize* for inquiry and report.
- The Board consists of a Chairman and such other persons as the Minister may decide, all of whom are appointed by the Minister.
- The *report of the Board and any minority report* are submitted to the Minister who may publish the report periodically.
- The Act (Sec. 10-17) also provides for: -the power to summon witnesses; -circumscribing the duty and privileges of witnesses; -appearance of a counsel or solicitor at the discretion of the

Tribunal or the Board; -public and private sittings of the Board; -the Minister to make rules regulating the procedures to be followed by the Tribunal or the Board; and

- penalty for *disobedience, disrespect, or obstruction should the Director of Public Prosecutions* consent to the institution of prosecution.

The Trade Unions and Employers Act, No. 24 of 2000

The Trade Unions Act, like other Trade Unions Acts in the Caribbean *provides* for the:

- registration requirements and procedures for trade unions;
- protection of trades unions from *criminal prosecution for conspiracy or otherwise*;
- prohibition of *actions of tort and breach of contract or agreement or trust* in contemplation or in furtherance of a trade dispute; and
- the self-governance and management of union affairs.

Trade Unions and Employer's Organizations(Registration, Recognition, and Status) Act,Chapter 304 – December 2000

Freedom of Association (Part II)

This Act protects the rights of trade unions and employers:

- to freely and voluntarily associate with any organization of their own choosing without external interference;
- to enjoy their basic rights free from discrimination; and
- to form and join any national or international federation.

Registration and Status (Part II) The Minister appoints, after consultations with representative trade unions and employers' organizations, a suitably qualified and experienced person as the *Registrar of Trade Unions and Employers' Organizations* to register such organizations in keeping with the procedures and requirements of this part of

the Act.

Annual Returns (Sec. 15)

- . • This law requires *trade unions and employers' organizations* to submit an *annual return* by 30th June each year, the contents of which should include: -an audited financial statement for the preceding year.
- . • The Registrar, after giving warning to comply, may suspend or cancel the Certificate of Registration, subject to an appeal to the *Tripartite Body*, against such suspension or cancellation.

Recognition of Bargaining Rights (Part V)

-Tripartite Body for Collective Bargaining (Sec. 22-25)

- . • The Minister may appoint a *Tripartite Body* (the Tripartite Body) comprising representatives as follows: -three of his/her nominees, one of whom is appointed the Chairperson;
-three nominated by trade unions; and
-three nominated by employers' organizations.

. • The *Tripartite Body* is responsible for: -determining the certification of any trade union for collective bargaining purposes; -determining the suitability of the bargaining unit, and may include or exclude some employees as it considers appropriate; -operating in keeping with the second schedule of the Act; and

- certifying a trade union as the *sole and exclusive bargaining* agent for the relevant bargaining unit in keeping with the procedures and requirements of this part.

. • All existing trade unions which were certified and recognized as bargaining agents at the commencement of this Act are *deemed so certified and recognized for the purpose of this Act*.

. • The *Tripartite Body* only certifies a trade union with at least 51% support of employees in the bargaining unit for collective bargaining purposes where it is established either by a membership survey where only one union is involved, or by a *poll of secret ballot* where two or more unions are involved (Sec. 27 28).

. • The employers are bound to negotiate collectively with any trade union certified as a bargaining agent for a bargaining unit.

Employer to Negotiate with Certified Trade Union (Sec. 33)

. • Once the Tripartite Body certifies a Trade Union as the bargaining agent, the employer is required to recognize the concerned trade union and meet and engage in negotiations for collective bargaining purposes.(i)

. • Like Trinidad and Tobago and Grenada, the parties are required to *negotiate in good faith* and to make every reasonable effort to conclude a collective bargaining agreement.(ii)

. • Any party aggrieved by a contravention of (i) and (ii) above (sec. 33) may apply to the *Supreme Court* (Court) for redress and the Court may grant such relief as it considers just and equitable.

Duty of Fair Representation (Sec. 34)

. • Trade Unions who are certified and recognized as *the sole and exclusive* bargaining agent are required to provide full and proper representation during the bargaining process for all employees in the relevant bargaining units.

. • Any such employee who is aggrieved by the representations by the union may apply to the Supreme Court for redress and the Court may grant such relief as it considers just and equitable.

De-certification (Sec. 38)

- In keeping with the procedures and requirements of this section, the *Tripartite Body* may *de-certify* a trade union by withdrawing certification of the trade union in respect of the bargaining unit, on the basis that the majority of the employees no longer wish to have the trade union as their bargaining agent.
- Any trade union or person aggrieved by the decision of the Tripartite Body may *appeal to the Minister, whose decision on the matter is final.*

Collective Bargaining Agreements (Part VI)

- Collective bargaining agreements are binding on the concerned contracting parties and employees in the relevant bargaining unit.
- The terms of the collective bargaining agreement are and shall be deemed to be incorporated into the employment contract of each concerned employee.
- Any aggrieved person may apply to the *Supreme Court* for redress, and the Court may grant such relief as it considers appropriate.

International Labour Convention Act, 1999

This Act gives effect to *the International Labour Organization (ILO) Conventions* ratified by Belize:

- Section (1) states:
 - notwithstanding any other law, but subject to the provisions of this Act, the ILO Conventions ratified by Belize as listed in the schedule *have the force of law in Belize.*
 - this Act is read *and construed as being in addition to, and not in derogation of,* the provisions of the Labour Act, but where there is a conflict between the provisions of this Act and the Labour Act, *the provisions of this Act prevails.*
- The Act (Sec. 5) enables the Minister to make regulations for the effective implementation of objectives and purposes of this Act and the ILO Conventions ratified by Belize. Such regulations are subject to negative resolution of the Parliament.

Equal Pay Act, 2003

The Act makes provision for the removal and prevention of discrimination based on the sex of the employee, in rates of remuneration for males and females, males and males, and females and females in paid employment.

Burden of Proof (Sec. 7)

The burden of proof rests with the employer to establish that equal pay for equal work has been paid

Assignment of Investigating Officers (Sec. 9)

The Labour Commissioner is empowered to assign officers to investigate any complaints, and otherwise secure the proper observance of this Act. Such designated officers may

enter the premises of any employer at any reasonable time for the purpose of such investigations.

Prosecutions for Breaches (Sec. 11)

Any *designated officer* authorised by the Labour Commissioner may prosecute or conduct such proceedings against any person for an offence against or for the recovery of any penalties under this Act or its regulations.

9. Barbados

Trade Unions Act (Chapter 361 – April 1964)

Compulsory Registration (Sec.12)

- . • *Every trade union is required to be registered* in accordance with this Act or be dissolved within three months of its formation, or upon refusal of the Registrar to register the union for failure to meet the requirements of this Act.
- . • *Any seven or more members of a trade union*, by subscribing their names to the rules of the trade union, and complying with the requirements of this Act with respect to registration, may register such trade union under this law.
- . • *All the purposes* of a trade union outlined in its rules or constitution *must be lawful* to be registered and to maintain such registration.
- . • The Trade Unions Act protects members in their action in contemplation or furtherance of a trade dispute in relation to conspiracy or for damages for the breach of any agreement (Sec. 5 and 6).

Labour Department Act: Chapter 23, Sept. 1943

Duties of the Chief Labour Officer (Sec. 3) The Labour Department Act provides for the *duties of the Chief Labour Officer and other officers of the Ministry of Labour* and for related purposes.

The Act details the duties of the Chief Labour Officer to:

- . • *receive and investigate all representations* whether of employers or of employees, concerning any business, trade, occupation, or employment with a view to the settlement of disputes and grievances;
- . • *conciliate* especially regarding hours and conditions of work and regulation of wages, and to report to the Minister;
- . • *advise the Government* with regard to the improvement of labour and industrial relations matters;
- . • *ensure the due enforcement of labour laws; and*
- . • *prepare cost of living indices and statistics* of earnings and conditions of employment.

Labour Inspection (Sec. 4-5)

Labour inspection duties are performed by the Chief Labour Officer, the Deputy Chief Labour Officer, and Labour Officers by visiting places of employment and instituting enquiries to:

- . • ensure that the laws in force concerning conditions of employment and

protection of employees in the occupation are fully applied;

- . • give technical advice to employers and employees;
- . • indicate in their inspection reports difficulties or abuses not covered in law;
- and
- . • establish statistical data.

No officer shall perform labour inspection duties in respect of any business in which there is a *conflict of interest* (Sec. 6).

Entering Premises (Sec. 7) The Chief Labour Officer, the Deputy Chief Labour Officer or a Labour Officer may *enter, inspect and examine at all reasonable times by day or night* any premises where labour is employed or any place liable to inspection to:-

- . • require information on wages, hours and conditions of work;
- . • carry out any examination, test or enquiry ;
- . • interview the employer or any of the staff;
- . • require the production of books, registers or other documents;
- . • enforce the posting of notices; and
- . • remove samples for the purposes of analysis.

Duty of Employers to Furnish Information (Sec. 8)

Any employer who employs *ten or more employees* is required, on request, to furnish the *following particulars* in respect of the business, trade or profession to the Chief Labour Officer :-

- . • the nature of the business, trade or profession;
- . • the nature of the undertaking and form of its ownership;
- . • the number of employees employed during specified periods including an analysis of this number into numbers of adults and juveniles, and the number of both sexes, and where appropriate the number of skilled, semi-skilled and unskilled;
- . • hours of work specifying normal hours and overtime hours;
- . • the task work or piece work performed, specifying customary or average hours required per task or per piece; and
- . • wages and salaries paid, distinguishing basic wages and salaries, cost of living allowances, bonuses, fees and any other payments and honoraria, and the amounts paid to operatives in important occupational groups, and to administrative, technical and clerical employees.

Legal Proceedings (Sec.13) This Act empowers the Chief Labour Officer, the Deputy Chief Labour Officer or a Labour Officer to *institute proceedings in his/her own name* against an employer for any contravention of or offence committed under this Act. *Such an Officer may appear and conduct any such proceedings in the Courts.*

Similar powers reside in Labour Officers/Inspectors in Belize, Cayman Islands, Grenada, Guyana, Montserrat, and Anguilla.

Severance Payments

(Chapter 355 A – January 1973)

This Act provides for *severance payments* to employees who are terminated for reasons of redundancy.

Severance Payment (Sec. 3)

An employer is liable to pay severance pay, in accordance with the Act where an employee is:

- . • dismissed because of redundancy; or
- . • laid off or kept on for a short-time for 13 or more consecutive weeks; or a series of 16 or more weeks within a 26-week period (Sec.6)
- dismissed because of natural disaster.

Severance payment is made in accordance with the first five schedules to this Act, and is paid within two months of its becoming due (Sec. 3A).

Exclusion of Severance Pay Entitlement (Sec. 4)

- . • An employee under the age of 16 years or over 65 years is *not entitled* to a severance payment.
- . • An employee is *also not entitled* to severance pay where:
 - the employee's contract of employment has been terminated because of his/her conduct without notice, or shorter notice than required by law; or
 - the employer has offered in writing *to renew the contract* of employment or *to re-engage* him/her under a new contract of suitable employment *and the employee has unreasonably refused that offer.*

Minimum Period of Notice (Part IV, Sec 20) In keeping with this Act, an employer is required to give the following minimum period of notice to terminate the contract of employment of a person who has been *continuously employed for one hundred and four weeks or more*:

- . • *two weeks' notice* if the employee's period of continuous employment is two years or more but less than five years; and
- . • *four weeks' notice* for five years or more continuous employment.

Notice for Termination of Contract (Part IV, Sec. 20)

- . • An employee with *one hundred and four weeks continuous* employment or more is required to give at *least one week's notice* to terminate his/her contract of employment.
- . • Either party is free to *waive the right to notice* or accept payment in lieu of notice.
- . • Either party is free to treat the contract as *terminable without notice* because of such conduct by the other party as would enable him/her so to treat before 1st January 1973, the commencement of this Act.

Establishment of Severance Fund (Part V, Sec. 24)

- . • The Act establishes a *Severance Fund* under the control and management of the Minister. The Minister may invest the fund in such a manner and in such securities as the Minister of Finance may direct.
- . • The Minister is empowered to *delegate to the National Insurance Board or to the Director, National Insurance*, the control and management of the Fund, and the Board and the Director are required to manage the Fund in accordance with Part V of this Act.

Dominica has similar provisions for the establishment of a fund for redundancy, which is also managed by the Social Security Board.

Trade Disputes (Arbitration and Inquiry) Chapter 360 (June 1939)

This Act provides for the establishment of an *Arbitration Tribunal* and a *Board of Inquiry* in connection with trade disputes, makes provision for the settlement of such disputes, as well as inquires into the economic and industrial relations in Barbados.

The provisions of this Act were also adopted in similar legislation in Belize, Saint Lucia, St. Vincent and the Grenadines, and St. Kitts and Nevis.

Report of Trade Dispute to the Governor General (Sec. 3 – 6)

. • Any trade dispute may be reported to the Governor General by or on behalf of either party to the dispute, for his/her consideration and for any expedient action for promoting a settlement.

. • The Governor General may, with the consent of both parties, refer the matter for settlement by an *Arbitration Tribunal* constituted of either: -a sole arbitrator appointed by the Governor General; or -an Arbitrator assisted by one or more assessors equally

nominated by or on behalf of employers and employees concerned, all appointed by the Governor General; with *the award being made and issued by the arbitrator.*

-*one or more arbitrators* equally nominated by or on behalf of employers and employees concerned, and an independent Chairman, all of whom are appointed by the Governor General. Should the *members of the Tribunal* fail to agree as to their award, *the matter is decided by the Chairman as sole arbitrator.*

. • Where there exists any procedure between the parties for settlements by conciliation or arbitration, the Governor General shall not, unless with the consent of both parties to the dispute, and unless there has been a failure to obtain a settlement through these procedures, refer the matter for settlement by Arbitration as outlined above.

. • *The Tribunal shall not make any award, which is inconsistent with any law regulating wages, hours of work, and conditions of employment.*

. • The award of the Tribunal is submitted to the Governor General who may publish the award.

Enquiry into Trade Disputes and Board of Inquiry (Sec. 8 – 9)

. • Where any trade dispute exists or is apprehended, the Governor General may *inquire into the causes and circumstances of the dispute and may appoint a Board of Inquiry* (Board) to inquire into the matters referred to it and report to the Governor General.

. • The Governor General may also refer any matter connected with the *economic or industrial conditions* to the Board for inquiry and report.

. • The Board consists of a Chairman and such other persons or only one person as the Governor General may appoint.

. • Any reports of the Board, interim or final, and any minority report are submitted to the Governor General.

. • The Governor General may publish the report periodically in such a manner as he/she thinks fit, in keeping with this Act.

10. Saint Lucia

Trade Disputes Act (Arbitration and Inquiry) Chapter 103 - December 1940

This legislation is similar to the legislation of Barbados, St. Kitts and Nevis and St. Vincent and the Grenadines.

Report to the Governor and Reference to the Arbitration

(Sec. 3)

- . • Any trade dispute may be reported to the Governor and the Governor may take any expedient steps to promote a settlement.
- . • With the mutual consent of the parties, the Governor may refer the matter for settlement to an *Arbitration Tribunal* constituted of either: -a *sole arbitrator* appointed by the Governor; or -an *arbitrator*, assisted by *one or more assessors* equally

nominated by and on behalf of the concerned employers and workers, all of whom are appointed by the Governor; *but the award is made and issued by the Arbitrator only*;

- *one or more arbitrators* equally nominated by the concerned employers and workers and an independent Chairman, all of whom are appointed by the Governor. Should all the members of the Tribunal fail to agree as to their award, *the matter is decided by the Chairman as Sole Arbitrator*.
- The Governor may refer a dispute to Arbitration with the consent of both parties after there has been a failure to obtain a settlement by their internal arrangements by means of *conciliation or mediation*.

Award of Tribunal not to conflict with any Law (Sec. 5)

An award of the Tribunal in relation to wages, or hours of work, terms or conditions, affecting employment, which are regulated by any law, cannot be inconsistent or in contradiction with any such law.

Board of Inquiry (Sec. 8-9)

- . • The Governor may inquire into the *causes and circumstances of any dispute* and refer any matter connected or relevant to the dispute to *the Board of Inquiry* (Board), appointed by the Governor for *an inquiry and a report*.
- . • The Governor may also refer *any matter connected with the economic or industrial conditions* to the *Board* for an inquiry and a report.
- . • The *Board* may consist of one or more persons appointed by the Governor.
- . • Any report of the Board of Inquiry or any *minority report* is submitted to the Governor, who may then publish the report.

Rules of Procedure (Sec. 13) The *Governor in council* may make rules regulating the procedure to be followed by an *Arbitration Tribunal* or *Board of Inquiry*, or in the absence of any rule, the Tribunal or the Board regulates its own procedure.

Labour Ordinance 1959 and Labour Ordinance 1974 (Amendment)

Like other Labour Acts in the Caribbean, this law provides among other matters, for:

- . • the appointment of a Labour Commissioner with all the powers conferred upon Inspectors of Labour whose appointments are also authorized by this law;
- . • regulations to be made for the duties of the Labour Commissioner.
- . • the Labour Commissioner to supervise and direct the work of inspectors;

- . • the collection of labour statistics and the provision of information;
- . • the preparation and submission of annual reports;
- . • the powers of labour inspectors;
- . • the appointment of a *Labour Advisory Board* (Board) to *consider and make recommendations* on any aspect of industrial life in Saint Lucia; and
- . • standing rules and orders for the regulation of the proceedings of the *Labour Board*.

Essential Services Act 1975

Like the legislation in other Caribbean states, the *Essential Services Act 1975* provides for the settlement of trade disputes through adjudication where the concerned parties were unable to settle their disputes through their own internal procedures and machinery for negotiation, conciliation or arbitration.

Prohibitions of Industrial Action (Sec. 10) The *law prohibits* lockouts, strikes and *other industrial actions in connection with a dispute in an essential service* where, after reporting the dispute to the Minister, thirty-one days have elapsed and the dispute has not been settled. As listed in Schedule I of the Act, the essential services are:

- . • electricity generation and supply;
- . • public health services;
- . • hospital services;
- . • sanitation services;
- . • telephone services; and
- . • water services.

Contracts of Service Act 1970

This act, like similar other legislation in other Caribbean states, provides for:

- a written statement detailing all the material terms and conditions of employment;
- . • the rights of both the employee and the employer to a minimum period of notice (Sec.6);
- . • summary dismissal, abandonment of employment for lawful cause, and termination of employment; and
- . • *termination for reasons of redundancy* and the provision for *severance pay* to affected employee as a rightful entitlement in line with the Act (Sec. 9-11, Part II).

Registration, Status and Recognition of Trade Unions and Employers'

Organizations Act No. 42/1999

This Act provides, among other matters, for:

- . • *trade unions and employers' organizations* to be registered in accordance with this Act;
- . • the registration of: -a trade union with *thirty members* or *more* and -an employers' organization with any *ten members*. These organizations may register with the *Registrar of Trade Unions* appointed by the *Public Service Commission* on the recommendation of the Minister; and
- . • procedures and requirements for proper financial accountability and general governance of such organizations in keeping with this Act.

Recognition of Bargaining Rights: Part V Application

Procedures (Sec. 24 – 26)

- . • A Trade Union may *apply to the Labour Commissioner to be recognized as the exclusive bargaining agent* in the relevant bargaining unit.
- . • All existing trade unions which were recognized as bargaining agents immediately before this Act came into force, are *deemed to be recognized*.
- . • Applications for recognition may be made at any time in situations where there is no collective bargaining and no trade union has been recognized.
- . • The *Labour Commissioner*: -serves a copy of the application to the employer;

- determines the application for recognition not later than *three months* from the date the application was received by him/her;
- determines the *appropriate bargaining* unit; and -includes or excludes employees from the bargaining unit.

Employers' Recognition of Trade Unions (Sec. 27)

The employer, within fourteen days of being served with a copy of the application by the Labour Commissioner, may communicate:

- . • its agreement to recognize the Union; or
- . • communicate, in writing with reasons, that it doubts that the Union is entitled to be recognized.

Recognition Following Employer Agreement (Sec. 28)

Where an employer communicates his/her agreement to recognize the Union, the *Labour Commissioner so recognizes the trade union*.

Recognition by Poll Majority (Sec. 29) Where more than one union applied to be recognized, or where the employer has doubted entitlement to recognition, *the Labour Commissioner conducts a secret poll in accordance with the Act and shall recognize as the bargaining agent, the trade union which received the greatest support among employees*.

Granting or Refusing Recognition (Sec. 33)

- . • The *Labour Commissioner determines recognition questions* within three

- months of receipt of the application, and:
 - where the employer agrees, and where the secret poll indicates greatest support, the *Labour Commissioner shall recognize* the trade union as the bargaining agent for the relevant bargaining unit.
- The Labour Commissioner may also:
 - *refuse* to recognize the trade union on the grounds that it has not satisfied the requirements that a majority of employees wish the trade union recognized as *exclusive bargaining agent*; or
 - *refuse* to recognize the trade union on the grounds *that the bargaining unit identified by the trade union is not appropriate*.

Compulsory Recognition and Good Faith (Sec. 34)

- Where a trade union has been recognized as the *bargaining agent* for any bargaining unit by the Labour Commissioner, the Act requires the employer to recognize the trade union, and the employer and the trade union are required to engage in bargaining.
- A trade union, employer or employers' organization is also required to *enter into collective bargaining negotiations in good faith* and make every reasonable effort to conclude a collective agreement.

Right of Appeal (Sec. 39)

If recognition of a trade union as the bargaining agent is *refused, withdrawn, terminated or modified* by the Labour Commissioner, either party may refer the matter to the *Tribunal* for determination.

Collective Agreement (Sec.42, Part VI)

A *collective agreement* is written and signed by the concerned *parties and lodged with the Minister*. In keeping with this Act, it contains:

- effective procedure for the avoidance and settlement of *rights and interest disputes* including reference of any disputes to *conciliation, mediation or arbitration*; and
- provision for the settlement of differences relating to *interpretation, application and administration of the agreement*.

Enforceability of Collective Agreements (Sec. 43)

- A collective agreement is legally binding on the concerned parties and employees in the relevant bargaining unit, unless otherwise stated.
- The terms of the collective agreement are *deemed to be incorporated into the employment contract of all the concerned employees* in the relevant bargaining unit for whom the trade union has been recognized.
- Any party to a binding collective agreement *may apply to the Tribunal to enforce the agreement*.

Part VII Tribunal (Sec. 45)

- The Act establishes the *Industrial Relations Tribunal* (Tribunal) comprising of persons appointed by the Minister:
 - *an Arbitrator*, who is also the Chair of the Tribunal;

- *two Arbitrators* nominated by the representative employers' organization;
- *two Arbitrators* nominated by the representative workers' organization.
- . • *Three Arbitrators constitute the quorum* for a sitting of the Tribunal for the *settlement of a trade dispute or complaint*.
- . • The Minister may make *regulations*, or in the absence of which, the Tribunal regulates its own procedure.
- . • Except with the consent of the parties and where there is a failure to obtain a settlement by means of any existing arrangement between the parties for *conciliation, mediation, or arbitration, a dispute may not be referred to the Tribunal*.

Regulations (Sec. 46)

The Minister, in consultation with the Labour Commissioner, may make regulations for:

- . • the conduct, organization and training for a secret poll; or
- . • putting into effect the provisions of this Act.

Labour Law Reform

A *draft Labour Code* is being discussed among Government and the social partners with the view to early enactment into law. The draft Code entails:

- . • consolidation of existing labour laws;
- . • codifying of labour laws, taking into account customs, practices, procedures and interpretation of existing laws; and
- . • updating, rationalizing existing laws and incorporating new standards to fill gaps in the existing labour law.

11. St. Vincent and the Grenadines

Trade Unions Act Chapter 154 - February 1953

Registration of Trade Unions (Sec. 10) The law provides for *any seven* or more members of a trade union to register as a trade union by subscribing their names to the rules of the union and complying with the other requirements of this Act.

Protection of Trade Unions (Sec. 3-4) Trade unions are protected against legal action or criminal prosecution for any act done by a person in contemplation or furtherance of a trade dispute on the grounds that:

- . • their actions are unlawful; and
- . • they induce others to break a contract of employment.

Immunity and Conspiracy (Sec. 27-28)

The Act further protects trade unions by *immunity from action of tort*. Any tortious act *shall not be entertained by any court*; or for actions in contemplation or furtherance of a trade dispute.

Trade Dispute Act (Chapter 153) Act 1941

This legislation is similar to the legislation of Barbados, Belize, Saint Lucia and St. Kitts and Nevis.

The Act provides for the establishment of an *Arbitration Tribunal* and a *Board of Inquiry* in connection with trade disputes and, for the purpose of inquiring *into economic and industrial conditions* in St. Vincent and the Grenadines.

Report of Trade Disputes (Sec. 3)

Trade disputes may be reported to the Governor-General by or on behalf of either party to the dispute. The Governor-General may take *any expedient action to promote a settlement*.

Reference to Arbitration (Sec. 4)

- Where a trade dispute exists or is apprehended, the Governor-General may, with the consent of both parties refer the matter for settlement to an Arbitration Tribunal appointed by the Governor-General and which constitutes of either: -a sole Arbitrator; -an Arbitrator assisted by one or more assessors equally nominated by or on behalf of the concerned employers and workers, with the award being made by the Arbitrator only; or
 - one or more Arbitrators equally nominated by or on behalf of the concerned employees and workers, and an independent Chairman.
- Should all the members of the Tribunal fail to agree on their award, *the matter is determined by the Chairman as sole arbitrator*.

Conciliation before Reference to Arbitration (Sec. 5) Existing arrangements between the parties for settlement by *conciliation or arbitration* of disputes must first be utilized, before a reference to the Tribunal for Arbitration, unless both parties request the Governor-General to make such a reference, or the parties failed to settle the matter through their own procedures.

The Award and Publication (Sec. 7-9)

- Any award by a Tribunal regarding any trade dispute referred to the Tribunal on wages, hours of work and terms of conditions, shall not be inconsistent with any law regulating such conditions.
- The award is submitted to the Governor-General who may publish the award.
- Questions of interpretation of any award are referred back to the Arbitration Tribunal for hearing and determination of the matter.

Board of Inquiry (Sec. 10-11)

- The Governor-General may inquire into the *causes and circumstances of any trade dispute*, and may refer any matters connected with a relevant dispute, to a *Board of Inquiry* (Board) appointed by the Governor-General to inquire and report to him/her.

- . • The Governor-General may also refer *any matter connected with the economic or industrial conditions* in St. Vincent and the Grenadines to the *Board of Inquiry* for a report.
- . • The Board is selected and appointed by the Governor-General and consists of the Chairman and other members determined by the Governor-General.
- . • The Board may present to the Governor-General an interim report and a final report prepared by the Board, and any minority report.
- . • The Governor-General may publish the report as considered timely and appropriate.

Rules of Procedure (Sec. 15) The Governor-General may make *rules regulating the procedures* to be used by the Tribunal or the Board of Inquiry. However, in the absence of rules on any particular matter, the Tribunal or the Board may regulate its own procedure.

Essential Services Act (Chapter 149: 1965 Revised 1990)

Breach of Contract (Sec. 2-4)

- . • Where any *collective withdrawal of labour for an essential service is contemplated*, fourteen days notice is required to be given in accordance with this law.
- . • Any employee in an *essential service* who willfully breaks his/her contract of service *which can contribute to depriving the public of that service*, commits an offence and is liable on conviction to a fine and to imprisonment.
- . • The *consent of the Director of Public Prosecutions* is required before anyone is prosecuted for an offence under this Act.
- . • The essential services are: electricity, health, hospital, sanitation and water.

Employment Protection Act No. 20 of 2003

This Act repeals the Protection of Employment Act (Chapter 150: July 1980) and supports employment relationships.

Promotion of Employment Rights (Part II: Sec. 5)

The act provides for the protection of every person:

- . • against unfair termination or dismissal from employment without good and sufficient cause;
- . • to be provided with the opportunity to defend himself/herself against any allegation, except in cases where the employer cannot reasonably be expected to provide such opportunity.

Terms of Employment in writing (Sec. 8)

An employer is required to inform an employee, except daily and weekly paid workers, in writing, within seven days of employment, of the terms and conditions of employment as outlined in this section.

Termination for Good Cause (Sec. 9)

Where the service of an employee is terminated for good cause, such an employee shall not be eligible to receive severance pay from the employer.

Permission of the Labour Commissioner for termination (Sec. 10)

- Where an employer desires to terminate the services of an employee for any reasons other than good and sufficient cause in keeping with section 9 on the ground that no reasonable employer can continue to employ him/her, the employer is required to file a petition before the Labour Commissioner seeking permission for termination;
- The Labour Commissioner: -informs the concerned employee; and -determines either to grant or reject the petition after investigations, including hearing the employee in his/her own defence or as may be represented.

Terminations for illness (Sec.11)

The services of an employee may be terminated:

- for illness where a medical practitioner certifies that the employee is incapable of performing his/her duties due to physical or mental illness for a protracted period of six months and is likely to be permanent;
- the employer must inform the Labour Commissioner of a dismissal in such circumstances; and
- such an employee is entitled to severance pay.

Termination due to Redundancy (Sec. 12)

- The services of an employee may be terminated on the grounds of redundancy in keeping with this section; and
- the employer must inform the recognised trade union, or if none exists, the representatives of employees, and the Labour Commissioner, in writing one month before the simultaneous or successive termination of the services of five or more employees on the ground of redundancy in keeping with the required procedures and providing relevant details.

Termination by the Employee (Sec.13)

- An employee can terminate his/her employment by giving one month written notice to the employer;
- If a longer period of notice is customarily given due to the nature of the work that is performed, and the employer conduct is of such a nature that the employee cannot be reasonably be expected to continue the employment, any such termination shall be deemed as termination on the part of the employer entitling the employee to severance pay if applicable; and
- the employee must establish the reason, which made the continuation of the employment relationship unreasonable.

Termination Notice (Sec. 14 -15)

An employer is required to give notice of termination in keeping with the schedule of the Act except in cases of probationary periods and for termination and summary dismissal for good and sufficient cause.

Prohibition against termination (Sec. 16)

The services of an employee shall not be terminated on any of the following grounds:

- . • Trade union membership or participation in trade union activities, and for seeking or holding trade union office;
- . • Making a complaint or participating in proceedings against any employer involving an alleged violation of laws or regulations;
- . • Race, colour, sex, marital status, pregnancy, religion, political opinion, nationality or social origin;
- . • Reasonable absence from work due to family emergencies or responsibilities;
- . • Absence from work during maternity leave as certified by a medical practitioner;
- . • Absence from work due to injuries or illness, provided the employee submits a medical certificate to the employer by the third day of absence; and
- . • Absent to perform jury service.

Remedies for Unfair Dismissal (Sec. 17-18)

- . • Complaints for unfair dismissal can be raised as a dispute by the employee, or any person or organization acting on behalf of the employee;
- . • Where a complaint is made for settlement as a dispute, the Labour Commissioner, the *Hearing Officer* or the Tribunal, taking into consideration the test of unfair dismissal (Sec. 18) and may order the employer to: -reinstate the employee if the order is appropriate and if the

employer and the employee agree;

- re-engage the employee in work comparable to that in which the employee was engage prior to dismissal, or other reasonably suitable work; or
- pay severance to the employee if the employee is so entitled.

Disciplinary Action (Sec. 19)

An employer can take disciplinary action other than dismissal against an employee as appropriate including verbal warning, written warning, suspension, or demotion having regard to the nature of the violation, the terms of the employment contract, the duties of the employee, the nature of the damage incurred and the previous conduct of the employee.

On Sale or Wind-up of Business (Sec. 20-21)

On the change of ownership, sale, or other dispossession of a business, and winding up, the rights and obligations accrued or accruing shall not be affected, and such rights and entitlements shall have priority over all other creditors including the crown, in relation to wages, holiday pay, any sums owing to the employee, and severance pay.

Severance Pay (Sec. 22 and 25)

- . • Every employee shall be eligible to receive from his/her employer severance pay in accordance with this Act.
- . • Severance shall be: -two weeks pay for each year of continuous from two to ten years; -three weeks pay for each further year of continuous service from eleven to twenty five years; -four weeks pay for each further year of continuous service in

excess of twenty five years;

at the rate of pay at the time of separation.

Disputes (Sec. 35 - 40)

- . • Complaints for failure to comply with any provision of this Act shall be filed as a dispute in writing to the Labour Commissioner.
- . • The Commissioner endeavours to bring about a settlement within fourteen days.
- . • If the Commissioner fails to promote a settlement, the Commissioner shall refer the dispute to the Minister.
- . • The Minister then refers the dispute a *Hearing Officer*.
- . • The Hearing Officer notifies interested parties, conducts hearing conferences, adjudicates on the dispute, and gives a decision

within fourteen days of closing or the hearing.

- . • Every decision of the *Hearing Officer* shall be final if no notice of appeal is filed within twenty-one days of his/her decision.
- . • Any party to the proceeding before the Hearing Officer may, within twenty-one days of the decision by the Hearing Officer, appeal against the decision to the Tribunal.

The Tribunal (Sec. 41)

- . • The Minister appoints the Tribunal consisting of a Chairman, and one assessor each representing the workers and employers.
- . • The Tribunal hears and determines disputes referred to it by the Minister, and issues its decision or order accordingly.
- . • The Tribunal reports its decisions or order to the Minister within twenty-one days of the reference.
- . • The decision of the Tribunal is final and shall not be questioned or reviewed in any court save and except where judicial review is applicable under any law.

12. St. Kitts and Nevis

Trade Union Act: Chapter 353

Registration (Sec. 12-13)

- . • This Act requires all trade unions, upon establishment, to be registered by the Committee of Management or other respectable authority, within thirty days of its establishment, regard being had to all its purposes being lawful.
- . • The Registration is with the Registrar of Trade Unions who issues a *Certificate of Registration*.

Protection against liability (Sec. 8) Trade Unions are protected against legal action for any act done by a person in contemplation or furtherance of a trade dispute on the grounds that such action:

- . • induces some other person to break a contract of employment;
- . • is an interference with the trade, business, or employment of others, or with the the right of some other persons to dispose of his/her capital or labour.

The Labour Ordinance 1966

Labour Department and Commissioner (Sec. 3) This law:

- . • establishes a Department of Labour;
- . • provides for the appointment of a Labour Commissioner and Staff; and
- . • allows for the Labour Commissioner to hold office at the pleasure of the Government.

Duties of the Labour Commissioner (Sec. 5) The Labour Commissioner is charged with the administration of the Department of Labour, and the responsibility to safeguard and promote the general welfare of workers. The Labour Commissioner:

- . • supervises and reviews various forms of employment;
- . • ensures observance of labour laws and regulations;
- . • promptly informs the Minister of every matter affecting workers and employers and recommends to the Minister measures, as deemed appropriate, for safeguarding and promoting the general welfare of workers; and
- . • directs and supervises the work of Inspectors (Sec. 10).

Powers of the Labour Commissioner (Sec. 6-8)

- . • The Labour Commissioner, with the consent of the parties, may use his/her good offices to enquire into any complaint, with the view to influencing and bringing about a fair and reasonable settlement without recourse to legal proceedings.
- . • The Labour Commissioner and inspectors have powers to act for the purposes of enforcing minimum wages.

Annual Report (Sec. 9) By the end of March each year, the Labour Commissioner is required to furnish the Minister with a report on the work of the Department of Labour, as stipulated in the law.

Powers of the Labour Commissioner and Inspector (Sec. 12) The Labour Commissioner and Inspector have the power to:

- . • enter and inspect places where labour is employed by day or night;
- . • inspect the state, conditions and general treatment of workers;
- . • require labour information and statistics from employers;
- . • carry out any examination, tests or inquiry where necessary;
- . • interview in an appropriate manner, the employer and any person necessary;
- . • require the production of books, registers or other documents

required by any law;

- . • take or remove for the purpose of analysis, samples of materials and substances used or handled by workers;
- . • enforce the posting of notices as required by law;
- . • take a police officer into any such premises if necessary, to prevent any serious obstruction of his/her duty.

Notification of presence (Sec. 14-15)

- . • The Inspector may, on a visit, notify the employer of his/her presence, unless such notification would be prejudicial to the performance of his/her duties.
- . • Employers are required to cooperate fully with the Inspector and allow free

communication with employees, free access and furnish the Inspector with the required information.

Other provisions

The law also provides for:

- . • the appointment of inspectors and outlines their duties;
- . • confidentiality of information; • offences and penalties ; and
- . • the power of the Minister to make regulations.

The Protection of Employment Act, Sept. 1986

Terms and Conditions (Sec. 4)

The employer is required to provide employees with written terms and conditions of employment within *fourteen days* of a request from the employee, subject to any regulation made by the Minister.

Termination of Employment (Part II - Sec.5)

Employment may be terminated by the employer in the following circumstances:

- . • Without notice during the probationary period;
- . • Without notice for any serious misconduct or for unsatisfactory work performance, subject to two written warnings within six months;
- . • On medical grounds; and
- . • For reasons of redundancy.

Notice of Termination (Sec. 7)

• Subject to Section 5, an employer is required to give an employee notice of termination on the basis of continuous service as follows: -One week for three months but less than one year -Two weeks for one year but less than five years -Three weeks for five years but less than ten years -Four weeks for ten years but less than fifteen years -Eight weeks for fifteen years and over; -One month for monthly paid employees with less than fifteen years; -Two months for monthly paid employees with more than fifteen years.

- . • Payment may be made in lieu of notice.
- . • The employer is required to notify the Labour Commissioner one month before any termination where the employer contemplates to terminate the services of *ten or more employees on the grounds of redundancy*.

Notice by Employee (Sec. 8)

• The Employee is required to give the employer: -The same period of notice he/she is entitled to receive as outlined in Sec. 7. -In the absence of a written contract, not more than four weeks

notice; and
-No notice on the grounds of *constructive dismissal*.

- . • The burden of Proof in any constructive dismissal rests on the employer.

Complaints to the Commissioner, Minister (Sec. 43)

- Any person or organization can make a complaint to the Commissioner. The Commissioner: -takes steps to assist the parties to arrive at a voluntary settlement through conciliation/ mediation; or -refers the matter to the Minister, failing a settlement within fourteen days. The Minister may seek to assist the parties to arrive at a voluntary settlement; or may refer the matter to a *Hearing Officer*, with the same powers of the Labour Commissioner.
 - The Minister may appoint one or more persons to function as *Hearing Officer(s)* or authorize any officer of the Department of Labour to exercise the powers of a Hearing Officer.
 - The Hearing Officer adjudicates and makes his/her findings in the dispute in writing within fourteen days.
 - Any interested party to the dispute who is dissatisfied with any of the recommendations may appeal to a judge in chamber. The judge may in addition to any other remedy: -order reinstatement of any affected employee, or -make an award of compensation.

The Act also provides for offences for breaches, and penalties of fine and imprisonment on summary conviction.

Trade Disputes (Arbitration and Enquiry) Act. (Chapter 352 No 19 of 1956)

This Act provides for the final settlement of trade disputes by an Arbitration Tribunal with the consent of both parties.

Board of Inquiry (Sec. 8) The Act also provides for the appointment of a *Board of Inquiry* (Board), to inquire into trade disputes referred to it, on any matter connected with or relevant to the dispute.

The Board may also inquire into matters connected with the *economic or industrial conditions* when directed to do so.

These provisions are similar to those provided in the legislation of Barbados, Belize, Saint Lucia and St. Vincent and the Grenadines.

13. Bermuda

Trade Unions Act 1965

Registration (Sec. 8 – 9) Trade Unions are required to register with the *Registrar General* as the Registrar for Trade Unions, within three months of their establishment, in keeping with this law.

Connection outside Bermuda (Sec. 14)

. • No trade union is permitted to be connected with or be part of any trade union or other organization in such a manner as to *place the trade union established in Bermuda or any of its members under the control of a trade union or other organization which is established outside Bermuda*.

. • The Registrar is empowered to withdraw or cancel the Certificate of Registration of any trade union so connected.

No action in Tort (Sec. 29) Trade unions and their members and officials are protected against prosecution in any court for any *tortious* act alleged to have been committed by or on behalf of the trade union.

Rights in respect of trade union membership and modification of rights (Sec. 30 – 31)

- Employees' rights to membership of trade unions, to actively participate in union activities, and to hold office are protected under this Act, subject to *agency shop* requirements that modify this right.
- Where an *agency shop* is in force, *an employee does not have the right to refuse to be a member of the trade union* for whose benefit the agency shop exists unless the employee agrees to pay *appropriate contributions* to the trade union in lieu of membership.

Appropriate contributions (Sec. 32)

Appropriate contributions in lieu of membership may be in amounts:

- . • not exceeding the equivalent of union dues for a corresponding period for *periodical payments only*; or
- . • not exceeding the equivalent of membership fees for a new member; *initial payment* and the equivalent of union dues for a corresponding period, as *periodical payment*.

Contribution to charity (Sec. 33) An employee is allowed under the law to pay the equivalent contributions to *a charity of his/her choice* instead of paying such appropriate contributions to a trade union *in lieu of membership*.

Setting up Agency Shop Agreement (Sec. 34)

- . • The employer and a trade union under the collective bargaining process are free to negotiate an *Agency Shop Agreement*, vary or terminate an agency agreement by subsequent negotiations.
- . • An Agency Shop Agreement is subject to the approval of employees before it comes into force, by a ballot ordered by the Minister.
- . • An Agency Shop Agreement shall not be at variance with this Act.

Report on Agency Shop Agreement (Sec. 35 – 37)

- Any concerned party to a collective agreement may report to the *Labour Relations Officer agreement or failure to enter into an Agency Shop Agreement*. Both situations are reported to the Minister.
- Where there is a failure to enter into an Agency Shop Agreement, the *Labour Relations Officer* endeavours to *conciliate* in the matter to assist the parties to reach an agreement.

- If the matter is not settled through the conciliation process, the Labour Relations Officer reports the matter to the Minister, who is empowered to order a secret ballot in accordance with Section 36 to establish *Agency Shop Agreements* and *Agency Shop Schemes*. The question upon which the ballot is to be taken being: -in the case of a ballot upon and agency shop agreement, the *approval of that agreement*; -in case of a ballot following the failure of conciliation, *the approval of an Agency Shop Scheme prepared by the Minister* after consultation with representatives of the concerned parties.
- Any concerned party alleging an irregularly conducted ballot may within four weeks, apply to the *Supreme Court* for the setting aside of the ballots, and -the Supreme Court may make such order as it considers just, and
 - subject to the order of the Supreme Court, the result of a ballot as declared to the Minister shall not be questioned in any court of law.
- On a majority vote of the employees in support of the agency shop, it shall be the duty of the employer to take all requisite actions in setting up the *Agency Shop Agreement* or *Agency Shop Scheme*.
- If a majority of employees vote against the agency shop, then the agency shop agreement providing for setting up such agency shop

is void.
- A new application for an agency shop is not entertained until the expiration of one-year.
- Applications may be made to the *Supreme Court* by the concerned trade union for any alleged breach of duty by an employer to implement the *agency shop agreement* or *agency shop scheme*.

Duration of Agency Shop (Sec. 38)

- An agency shop lasts for the duration stipulated in the *Agency Shop Agreement* or *Agency Shop Scheme*: -unless terminated earlier as a result of another secret ballot ordered by the Minister on application supported by at least one-tenth of the concerned employees and after two years of the ballot which gave effect to the Agency Shop.
- If a majority of the employees vote against the continuance of the agency shop, the agency shop shall *cease to be lawful*.

The Trade Union Amendment Act 1998

This Act regulates the recognition of collective bargaining rights.

Application for Certification (Sec. 30B)

A Union with 35% or more of the workers in a proposed bargaining unit, in keeping with the procedures of this Act, may make application to the Labour Relations Officer for the recognition and certification as majority union for collective bargaining purposes;

The Bargaining Unit (Sec.30D)

- On receipt of the application, the Labour Relations Officer shall assist the union and

the employer to determine the appropriate bargaining unit, having regard to:--the community of interest among the workers in the proposed bargaining unit;

- the nature and scope of the duties of those workers;
- the views of the employer and the union as to the

appropriateness of the proposed bargaining unit; and -the historical development, if any of collective bargaining in the enterprise.

- . • should the parties fail to agree on the appropriate bargaining unit, the Labour Relations Officer shall so advise the Minister who shall refer the issue to the Tribunal for determination;
- . • the Minister, by instrument in writing, appoints a three-person Tribunal in this regard after consultations with the social partners (second schedule to this Act); and
- . • the order of the Tribunal is final on this matter with no appeal.

Certification where there is agreement (Sec. 30 F)

Where only one union has applied for recognition and the employer has agreed to the application, and the Labour Relations Officer is satisfied that more than 50% of the workers in the bargaining unit support the union, *the Labour Relations Officer shall certify that union as the exclusive bargaining agent in respect of that unit.*

Certification in other cases (Sec.30G)

- . • Where only one union has applied and the employer has opposed the application, the Labour Relations Officer shall conduct a ballot among the workers in the bargaining unit and, if the ballot shows that more than 50% of the workers voting in the ballot support that union, *the Labour Relations Officer shall certify the union as the exclusive bargaining agent in respect of that bargaining unit.*
- . • Where more than one union has applied, the Labour Relations Officers similarly conducts a ballot among the workers in the bargaining unit, and if the ballot shows that none of the unions is supported by more that 50% of the workers voting in the ballot, the Labour Relations Officer shall conduct a *SECOND ballot.*
- . • In the second ballot, if there are only two unions contesting, the Labour Relations Officer shall certify the union which has secured more than 50% support of the workers voting in that ballot.
- . • If however, in the second ballot more than two unions contested and none of the unions secured more than 50% of the workers voting the ballot, then *the Labour Relations Officer shall conduct a THIRD ballot, in which the only union in support of which votes may be cast shall be the union which obtained the highest number of votes in the second ballot.*
- . • In the third ballot, if that only union secures more than 50% of the workers voting in this third ballot, the union shall be certified as the exclusive bargaining agent in respect of the bargaining unit.

Grant or refusal of certification (Sec. 30K)

Within three months after receipt of an application for certification, the Labour Relations Officer either certifies the union as the exclusive bargaining agent or refuses to do having regard to the conditions set in this Act for certification.

Compulsory recognition and duty to treat (Sec. 30L)

Where a union is certified in respect of a bargaining unit and the certification remains in force, the employer and the union are required in *good faith to treat and enter into negotiation* with each other for the purpose of collective bargaining.

Orders of the Labour Relations Officer and appeals (Sec.30R)

- . • An order made by the Labour Relations Officer *to grant or not to grant certification, or to cancel certification* (sec.30P) shall be in writing, signed by the Labour Relations Officer and dated, and addressed to the union and the employer.
- . • The union or the employer may appeal against the order of the Labour Relations Officer to the Minister who shall refer the appeal to the Tribunal for determination.
- . • The order of the Tribunal is final and subject to no appeal.

Arbitration settlement and Inquiry into Labour Disputes Labour Relations Act 1975

Labour disputes reported to Labour Relations Officer (Sec. 3)

- . • A labour dispute, whether existing or apprehended, may be reported to the Labour Relations Officer for settlement through the *conciliation process*.
- . • If the Labour Relations Officer or an authorized public officer fails to resolve the matter at conciliation, the Labour Relations Officer reports such dispute to the *Minister who may refer the dispute for settlement to: -a sole Arbitrator* appointed by the Minister; or *-an arbitrator, appointed by the Minister*, assisted by one or

more assessors equally nominated by or on behalf of the concerned employers and employees, all of whom are appointed by the Minister; or
-*one or more arbitrators* equally nominated by or on behalf of the concerned employers and employees and an *independent Chairman*, all appointed by the Minister or;

- the *Permanent Arbitration Tribunal* established under Sec.14 of this Act.
- Where there is any relevant *procedure agreement* between the parties for the settlement of disputes by *negotiation, conciliation or arbitration*, the Minister only refers such disputes for settlement by arbitration, in accordance with the above provisions and with the consent of all the parties to the dispute, and unless and until there has been a failure to obtain a settlement by these arrangements.

Boards of Inquiry (Sec. 4 –5)

- . • The Minister may appoint a *Board of Inquiry* to inquire into the causes and circumstances of any disputes and any matter connected with or relevant to the dispute. The Board inquires into such matters and reports to the Minister.
- . • A *Board of Inquiry* may consist of one person or a Chairman and other persons appointed by the Minister.
- . • A Board of Inquiry may present interim reports, its final report and/or minority reports to the Minister, who may then publish the reports.

Special Provisions for Essential Industries (Part II A) Application to essential industries (Sec. 5 A)

- . • Part II A of this Act applies to a *labour dispute, difference or other conflict* in any industry or business specified in the fourth schedule which currently specifies the *business of an hotel* which is *deemed an essential industry*.
- . • The fourth schedule may, by order of the Minister, be amended subject to

the affirmative resolution procedure in Parliament.

Board established (Sec. 5 B – 5 K) This act established an *Essential Industries Dispute Settlement Board* (the Board) for the *purpose of settling a labour dispute, difference or other conflict in an essential industry*:

- . • the Board consists of a Chairman, a Deputy Chairman and a panel of six to twelve other members appointed by the Minister, after consultation with the relevant and concerned persons and/ or organizations;
 - . • the Board, in the exercise of the powers conferred upon it, is not subject to the direction or control of any other person or authority, and is constituted in accordance with Section 5 D which provides for the appointment of: -a single member of the Board and up to two assessors, each
nominated by a party to the dispute, or -a three-person Board selected from the panel, including the Chairman or Deputy Chairman, in addition to two assessors;
 - . • members of the Board and the Chairman and Deputy Chairman may be re-appointed at the end of their term; and
- the Board regulates its own procedures and proceedings and has a Secretary and other staff appointed by the Minister.

Report of Labour dispute or difference (Sec. 5M – Q)

- . • Any unsettled dispute or difference in *an essential industry* may be reported by or on behalf of the concerned party or by the *Labour Relations Officer* to the Minister.
- . • Where a difference relates to a failure of the parties to conclude a new agreement, the collective agreement that was in force, despite its expiration, is deemed to continue in force until replaced by a new agreement.
- . • The Minister, in relation to any other disputes or differences, may: -any take steps to promote a settlement; or -appoint a *mediator* to settle the matter through the mediation
process with *twenty-one days*; or -refer the matter to be settled directly by the Board constituted in line with Sec. 5D.
- . • Board has power to request and receive all necessary information, and is required to make its award within *twenty-one days*.

Binding Award and Interpretation (Sec. 5R – S)

- . • Any agreement, decision or award by the Board is binding on all concerned parties, and it shall be an implied term of the contract between the parties until waived by a subsequent agreement, decision or award.
- . • *Questions of interpretation* of any agreement, decision or award of the Board are determined by the Board and shall be binding in the same manner as the decision in an original award.

Unfair industrial practice in Essential Services (Sec. 5T – U)

- . • Anytime after a labour dispute or a difference is referred to a *mediator* or to the Board or a complaint to the *Labour Relations Officer* or the *Minister*, a lock-out, strike or *irregular industrial action short of a strike*, constitutes an *unfair industrial practice*.
- . • An aggrieved person may present a complaint to the Board against any person or organization for indulging in an unfair industrial practice.

Failure to comply with Grievance Procedure (Sec. 5V – W)

- . • Failure to comply with the *grievance procedure* as set out in a *collective agreement* is an *unfair industrial practice*.
- . • A complaint may be made to the Labour Relations Officer who is required to endeavour to settle the matter by *conciliation*.
- . • Should conciliation fail to resolve the matter, the Minister may take any step to settle the matter or refer the matter to the Board for determination.
- . • The Board is empowered to hear, determine and award such remedies as it considers fit in accordance with Sec. 5W.

Enforcement and recovery of an award (Sec. 5X)

An award by the Board in relation to an *essential industry* may be:

- . • enforced in the *Supreme Court*;
- . • recovered as a civil debt in the *Supreme Court* or in a Court of Summary Jurisdiction.

Essential Services (Part III – Sec. 6)

The essential services include the following services listed in the first schedule of this act:

- . • Electricity
- . • Water
- . • Public Health
- . • Hospital & Nursing
- . • Domestic & Industrial Gas
- . • Ports & Docks
- . • Fire
- . • Lighthouse
- . • Air and marine traffic
- . • Refueling & maintenance of aircraft
- . • Loading & unloading mail
- . • Medical supplies
- . • Foodstuff
- . • Cattle
- . • Chicken feed
- . • Transport services
- . • Telephone, Telegraph & overseas communications
- . • Meteorological
- . • Airport security
- . • Airport services

Report of Labour dispute (Sec. 7)

A report of a *labour dispute in an essential service* is made in writing to the Labour Relations Officer.

Reference to Permanent Arbitration Tribunal (Sec. 8)

- . • The Minister may, by order, refer any labour dispute in an essential service for settlement to the *Permanent Arbitration Tribunal*, any time after the dispute has been reported to the Labour Relations Officer, and before the expiration of any notice of lock-out, strike or *irregular industrial action*.

• Before the Minister makes an order for reference to the Permanent Arbitration Tribunal, a labour dispute in an essential service is dealt with through conciliation, arbitration, or by the Board in line with the procedures provided for in Part II of this Act (Sec. 3 – 5).

Restriction of Industrial Action (Sec. 9)

• A lock-out, strike or any irregular industrial action in an essential service is *unlawful* unless there is a labour dispute: -reported to the Labour Relations Officer; and -thereafter valid notice of specified intended industrial action

.of *at least twenty-one days* prior to such action; and -the Minister has not referred the dispute to the Permanent Arbitration Tribunal.

• Notice of intended industrial action must be specific and meet all the requirements of this section to be valid.

Awards in essential services may be binding (Sec. 12) The Minister may publish in the Gazette, any award of:

- an Arbitration Tribunal; or
- *the Permanent Arbitration Tribunal*, resulting from the references to any of the tribunals in relation to a dispute in an essential service.

Upon publication, such an award is binding and becomes implied terms of contracts between the concerned parties.

Permanent Arbitration Tribunal (Part IV Sec. 14)

• The Act establishes a *Permanent Arbitration Tribunal* consisting of a Chairman, a Deputy Chairman and a panel of not more than twelve persons appointed by the Minister, after consultation with the representative employers' and workers' organizations.

• For the purpose of considering any dispute or other matters referred to the Permanent Arbitration Tribunal, the Tribunal shall comprise of: -the Chairman or Deputy Chairman and two members

selected by the Minister from the panel; or

- by mutual consent, the Chairman or Deputy Chairman and two other members, one each nominated from the panel by each party to the dispute.

• The Tribunal is appointed by the Minister.

Functions of Tribunal (Sec. 15)

The *Permanent Arbitration Tribunal* has jurisdiction to hear and determine any labour dispute or other matters referred to it under this Act or assigned to it by any law.

Assessors (Sec. 16)

A Tribunal may utilize the skill and expertise of any other person as assessors.

Award of Tribunal not to Conflict with any law (Sec. 23)

A Tribunal shall not make any award on wages or hours of work or terms or conditions of employment, that are regulated by law and

which is in conflict with any such law.

Interpretation (Sec. 25)

Matters of interpretation or alleged errors are referred to the Tribunal for hearing and determination.

Award by majority of Arbitrators (Sec. 27)

- Any award made by the Tribunal or by the Permanent Arbitration Tribunal is made by all the members of the Tribunal if they are in agreement, or if not, *by the majority*.

Penalties and Remedies

The law provides for penalties of fines and imprisonment on conviction in a court of law for breaches of the law and unlawful actions.

Employment Act 2000

The Act provides for the fair treatment of employees who work more than fifteen hours per week, by providing minimum standards of employment, by establishing procedures and notice periods for termination of employment and by providing employees with protection against unfair dismissal. It also establishes the *Employment Tribunal*.

Conditions of Employment (Part II - Sec. 6)

- Within one week of employment, the employer is required to provide the employee with a written signed, dated statement of employment, setting out in detail, relevant information and terms and conditions of employment.

Termination of Employment (Part IV – Sec. 18 – 20)

- An employment contract cannot be terminated unless there is a valid reason connected with: -the ability, performance or conduct of the employee; or -operational requirements of the employer's business, and -the following minimum periods of notice (statutory notice periods) are served in writing:
 - one week for weekly paid
 - two weeks for forthrightly paid,- one month in any other case.unless notice periods are otherwise regulated by contract or custom.
- No notice or reason is required for termination during any probationary service.

Payment in lieu of notice (Sec. 21) The law provides for the employer at his/her discretion, to pay an employee a sum equal to the wages and other remuneration and benefits in lieu of the required period of notice. Where an employee terminates his/her contract of employment without the required notice, the employee is only entitled to accrued wages and remuneration.

Certificate of termination (Sec. 22) An employer, at the request of the employee on termination, is required to provide the employee with a certificate of termination with such

details required by this section.

Severance Allowance (Sec. 23) On termination for *reasons of redundancy, or insolvency or death of an employer*, an employee, with at least one year's continuous employment, is entitled to a *severance allowance* from his employer equivalent to:

- . • *two week's* wages for the first ten years of continuous employment; and
- . • *three weeks'* wages for each completed year of continuous employment from the 11th year and subject to a maximum of 26 weeks' wages.

Misconduct -

Disciplinary Action (Sec. 24)

An employer is entitled to take disciplinary action including giving an employee a written warning or suspending an employee in keeping with this section.

Serious misconduct (Sec. 25 – 27)

An employer is entitled to dismiss an employee *without notice or payment of any severance allowance* for serious misconduct which:

- . • is directly related to the employment relationship; or
 - . • which has a detrimental effect on the employer's business
- An employer may also terminate an employment relationship for unsatisfactory work performance after warnings within six months.

Unfair dismissal (Sec. 28)

The dismissal of an employee is *unfair* if it is based on an employee's:

- . • race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability, marital status, age, pregnancy, trade union activity, illness or injury or public duties;
 - . • participation in lawful industrial action,
 - . • participation in legal proceedings against an employer for alleged violation of this act; or
- when an employee removes himself/herself from a work situation which presents an imminent danger to life or health.

Constructive dismissal (Sec. 29) An employee is entitled to terminate his/her contract of employment where the employer's conduct has made it unreasonable to continue the employment relationship. In such a situation, the employee is deemed to have been unfairly dismissed.

Termination for redundancy (Sec. 30) An employer may terminate the employment of an employee for reasons of redundancy in keeping with the procedures under this section.

Enforcement (Part V - Sec. 34) **Inspectors**

The Minister designates inspectors for the purpose of the enforcement of this Act.

Employment Tribunal (Sec. 35)

- . • The Act establishes the Employment Tribunal (Tribunal) with jurisdiction to hear and determine complaints and other matters referred to it under this Act.
- . • The Tribunal consists of a Chairman, a Deputy Chairman and a panel of not more than twelve members appointed by the Minister after consultations with representative organizations of trade unions and employers.
- . • For hearing and determining any matter, the Tribunal is constituted by: -the Chairman or Deputy Chairman -one or two members selected by the Chairman *to represent the interests of employees*; and -an equal number selected by the Chairman *to represent the interests of employers*.
- . • The Tribunal may be assisted by persons of skill and experience serving as assessors.
- . • The Tribunal exercises its power and authority conferred on it by this Act and is not subject to the direction or control of any person or authority.

. • In the absence of regulations by the Minister, the Tribunal regulates its own procedures and proceedings.

Complaints to the Inspector (Sec. 36 – 37)

Complaints may be made to the Inspector within three months where an employer has failed to comply with any provision of this Act.

- . • The Inspector inquires into complaints or failure to comply with the law and seeks to obtain all required and necessary information, and endeavours to *conciliate in the matter* to promote a settlement by all means at his/her disposal.
- . • Should the Inspector fail to effect a settlement, he/she shall refer the complaint to the Tribunal.

Hearing by the Tribunal (Sec. 38)

- . • The Tribunal hears the complaints, representations and submissions for the concerned parties under oath.
- . • In relation to dismissal for valid reasons, the burden of proof rests with the employer, and if he/she fails to do so, there is a *conclusive presumption that the dismissal was unfair*.
- . • In relation to *constructive dismissal*, the employee must establish that the continuation of the employment relationship is unreasonable.

Remedies (Sec. 39 – 40)

- . • The Tribunal may order an employer who has contravened a provision of this Act: -to take such actions which constitute full compliance; -to pay an employee such amounts as determined by the Tribunal.
- . • Where the Tribunal upholds a complaint of *unfair dismissal*, it may award one or more of the following remedies: -order *reinstatement* without loss of status or benefits, -order *re-engagement* in comparable or other suitable work

as ordered by the Tribunal or agreed by the parties, -a compensation order subject to a maximum of 26 weeks wages in accordance with this section.

Appeals (Sec. 41)

- . • Any aggrieved party may appeal against a determination or order of the Tribunal to the Supreme Court on a point of law within twenty-one days.
- . • The lodging of an appeal under this section shall act as a stay of any order of the

Tribunal.

Binding determination or order (Sec. 42)

Any determination or order of the Tribunal is binding on the employer or any successor.

Offences (Sec. 44)

The Act provides for the penalty of a fine of \$10,000 on summary conviction in a court of law.

Code/Handbook of Good Industrial Relations Practice

Like Jamaica, Bahamas and Guyana, Bermuda's Department of Labour has published and circulated a *Code of Good Industrial Relations Practices* (not law) for the guidance of social partners. It covers a number of areas including:

- . • The ILO and ILO Conventions
- . • Roles of the Social (Tripartite) Partners
- . • Rights in the workplace
- . • Trade Unions
- . • Legislation
- . • Workplace procedures
- . • Methods of dispute settlement
- . • Workplace issues
- . • New Technology

Occupational Safety and Health Act 1982 : 26

Among other provisions, the Act sets out:

- . • the duties and responsibilities of employers, requiring every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his/her employees;
- . • the general duties of every employee while at work to take reasonable care to protect his/her own safety and health and the safety and health of other persons;
- . • the right of employees to refuse dangerous work which may present imminent and serious danger to health and life;
- . • the establishment of an Advisory Council for Safety and Health to advise the Minister on all matters relating to Occupational Safety and Health in keeping with this Act;
- . • provision for the Minister to issue regulations and codes of practice;
- . • the appointment of Safety and Health Officers, outlining their duties and powers;
- . • establishment of joint management-employee safety and health committees at every place of employment where ten or more persons are employed, where the employer shall cause a committee to be established to be known as a *safety and health committee*;
- . • the appointment by the employer of a non-management employee to be a *safety and health representative* at every place of employment of fewer than ten

employees; and

. • the duties of both the *safety and health committee* and the *safety and health representative* shall include:--participation in the identification and control of the safety and

health hazards within the place of employment; -the establishment and promotion of safety and health programmes for education and information of employees; and -the receipt, consideration and disposition of matters respecting the safety and health of employees.

Human Rights Act 1981 : 41

. • The Act, in recognition of the inherent dignity and equal rights in line with its Constitution, the Universal Declaration of Human Rights of the United Nations, the European Convention on Human Rights, and applicable ILO Conventions, affirms these fundamental rights.

. • The Act prohibits a wide range of unlawful discrimination; establishes a *Human Rights Commission*; establishes offences and penalties for wilful and unlawful discrimination against a person contrary to any provisions or infringes the rights of a person under Part II of the Act.

14. Cayman Islands

Trade Union Law (Chapter 171 - 2001 Revision)

Registration (Sec. 4- 5) Trade Unions are required, within thirty days of establishment, to be registered with the Registrar of trade unions, who is appointed by the Governor.

Protection of Trade Unions (Sec. 3)

. • The *purposes of any trade union shall not be deemed unlawful* merely because they are in restraint of trade: -so as to render any member liable to criminal prosecution for

conspiracy or otherwise; or -so as to render void or voidable any agreement or trust.

. • An agreement or combination by two or more persons or *an act done in contemplation or furtherance of a trade dispute* shall not be punishable as a crime for conspiracy or actionable (Sec. 25)

Labour Law (2001 Revision)

Statement of Working Conditions (Sec. 6) Employers are required to provide every employee with a *written statement of his conditions of employment* in specific details in keeping with this Act.

Termination Notice by Employer (Sec. 10)

- The employer is required to give notice of termination as follows: -during an employee's probationary service, at least twenty-four hours notice;

- with respect to other employees, *notice equal to at least the interval of time between employee's pay days*; subject to a maximum of thirty days, unless an employment contract stipulates a longer notice period.

Termination Notice by Employee (Sec. 11-12) An employee is required to give to the employer *corresponding notice* in line with these Sections, and to receive, upon request, a *written statement of the reasons for termination* from the employer.

Severance Pay (Part V - Sec. 40-46)

- Every employee with *an aggregate continuous service exceeding one year* is entitled to receive from his employer severance pay upon termination for reasons *other than* misconduct or unsatisfactory work performance.
- Severance pay consists of:
 - one week's wages for each completed twelve month period of employment, subject to a maximum of twelve week's pay.
- Disputes concerning severance pay are referred to the Director of Labour for resolution.

Grounds for Termination (Sec. 48-51)

This law allows for termination on *grounds deemed to be fair*:

- at the end of fixed-term contracts;
- for good cause including, redundancy;
- for misconduct with warning or serious misconduct; or
- for failure to perform duties in a satisfactory manner following receipt of a written warning.

Remedies for Unfair Dismissal (Sec. 55)

- A *complaint of unfair dismissal* is determined by a *Labour Tribunal*. Where the Tribunal determines that a dismissal has been unfair, it may order monetary compensation.
- The amount of an award of compensation is restricted to not exceeding one week's wages for each year of service subject to a maximum of twelve weeks' wages.

Administration (Part VIII – Sec. 71-73)

- This law establishes the *Department of Human Resources* (Labour Department), comprising the Director of Labour, the Deputy Director and such labour inspectors and other staff required for the administration and enforcement of this law.
- The Director is charged with the responsibilities of *ensuring the proper observance of this law*.
- The Director, Deputy Director and any inspector in the performance of their functions under this law are empowered to enter work places and take all necessary action to secure the observance of this law.
- The Director, Deputy Director or any labour inspector may *institute criminal proceedings for any offence under this law*, and may appear before the *summary court* to *conduct and prosecute in respect of any such offence*.

Labour Tribunals (Sec. 74)

- The Act establishes *Labour Tribunals* for the purpose of hearing complaints

from employers and employees.

- . • The members of a Labour Tribunal are selected from a *panel of persons appointed by the Governor*.
- . • The person or persons constituting a Labour Tribunal are appointed by the Governor who also designates the Chairman where the Tribunal consists of more than one person.
- . • The Governor may, by regulation, provide for the constitution, procedure, staffing and expenses of the Labour Tribunals.

Complaints Procedure for the Director (Section 75)

- Upon receipt of a complaint, the Director:
 - within thirty days provides the employer with a copy of the complaint and other information, and invites a written response;
 - considers the complaint and any representations and reports to a Labour Tribunal; -may recommend that a Labour Tribunal hears and determines the complaint;
 - may recommend that the Department of Labour *conciliate in the matter or assist the parties by other means* instead of a hearing by a Tribunal.
- . • Where the Director recommends a hearing by a Labour Tribunal, hearing is fixed within two to three months following the date of the report to the Director.
- . • A Labour Tribunal is *required to give a reasoned written decision* within twenty-eight days of the conclusion of the hearing.
- . • The decision of the Tribunal is *final and binding between the parties*, subject to appeals to the *Grand Court* (Sec. 79) *on a point of law only*.

Enforcement of Award (Sec. 76) An award made by the Labour Tribunal on *severance pay* (Section 46) or on *unfair dismissal* (Section 53) is enforceable in like manner to a *judgement of the Grand Court* for the payment of a sum of money.

Establishment of Appeals Tribunal (Sec. 77)

- . • This law also establishes an *Appeals Tribunal*, whose quorum is four, consisting of a *Chairman* and *four* other members for the purpose of *hearing appeals against decisions of a Labour Tribunal*.
- . • Members of the Appeals Tribunal are appointed by the Governor for a term of one year and may be re-appointed for further periods.
- . • A Deputy Chairman is also appointed by the Governor.
- . • The Governor may make regulations for the Constitution, procedure, staff and expenses of the Appeals Tribunal.

Appeals from Decision of Labour Tribunals (Sec. 78-79)

- Any person aggrieved by a decision of a Labour Tribunal may appeal to the Appeals Tribunal in the following circumstances:
 - where the award exceeds five hundred dollars;
 - by service of a remedial notice;
 - that a dismissal action was fair;
 - for any refusal to register an overtime agreement; or
 - that no award should be made; or
 - that the award made is *less* than five hundred dollars where

- the aggrieved claim that the award should be more than five hundred dollars.
- An appeal is lodged in writing with the Chairman of the Appeals Tribunal.
- Notice of appeal operates as a *stay upon any award made by a Labour Tribunal*.
- Notice of appeal is served on the concerned Labour Tribunal and upon all concerned persons.
- The Appeals Tribunal hears and determines the appeal within three months in lieu with the procedures which the Governor may prescribe or in the absence of such procedures, by its own procedure at the discretion of the Chairman.
- The Appeals Tribunal issues a *written reasoned decision* within twenty-eight days from the conclusion of its hearing.
- The decision of the Appeals Tribunal *is final and binding upon all parties, subject to appeal upon a point of law only*.

Appeal to Grand Court (Sec. 79)

- An appeal may be made to the *Grand Court* from a decision of the Appeals Tribunal *upon a point of law only*.
- No decision of a Labour Tribunal or the Appeals Tribunal shall be *challenged or reviewed in any court of law on any grounds*.
- An appeal to the Grand Court *shall not operate as a stay of any award or decision of a Labour Tribunal on the Appeals Tribunal*.
- An application for a stay is made by an *ex-parte* application to the Grand Court.

Discrimination (Sec. 80)

It is unlawful for any person – employer or employee – to discriminate with respect to any person's employment by reason of:

- race, colour, creed, sex, pregnancy, age, disability - not affecting job performance, political belief or the exercise of any rights under this or any other law.

General Regulation making Powers (Sec. 85)

The Governor may make regulations for carrying this law into effect, for prescribing all matters or things which are required or permitted under this law.

Directions (Sec. 86)

The Governor may give *any officer or statutory authority* directions as to the execution of such function, and where such directions are given, the officer or the authority are required to comply.

Other Provisions of Labour Law (2001 Revised)

This law also provides for the protection, rights, entitlements and procedures for several other matters including:

- minimum leave entitlement, sick leave, maternity leave;
- remuneration and hours of work – national minimum wage set by the Governor's order based on recommendation of a *Minimum Wage Advisory Committee* established by the Governor, standard work week, and overtime pay;
- minimum gratuities for service employees and their distribution in

accordance with a scheme approved and registered with the Director of Labour or as prescribed by the Governor by regulations;

- . • health, safety and welfare at work applicable generally to all work places for the protection of employees; and
- . • penalties of fine and imprisonment for offences, and remedies.

15. Montserrat

The Trade Union Ordinance Chapter 322, 1940

Like other trade union acts in the Caribbean, the Trade Union Ordinance in Montserrat provides for:

- . • the procedures and requirements for trade unions to be registered in keeping with this Ordinance;
- . • the protection of trade unions against legal actions for *tort*, conspiracy and liability for trade union action in furtherance or in contemplation of trade disputes; and
- . • the proper governance and accountability of trade unions.

The Labour Ordinance of 1951

The law provides for the appointment of a Labour Commissioner and staff, and outlines the duties and powers of the Labour Commissioner, including the responsibility to:

- . • supervise and review conditions of employment and enforcement of the law;
- . • inspect workplaces and premises;
- . • investigate labour complaints and use his/her *good offices and influence to bring about a fair and reasonable voluntary settlement*.

Employment Ordinance, 1979

Power of Labour Commissioner (Sec. 4)

- . • The Labour Commissioner is empowered to institute proceedings for breaches of any provision of this Ordinance.
- . • The Labour Commissioner or any person authorized in writing by him/her has the right to conduct any such proceedings in the

Magistrate's Court.

Written particulars of Employment terms (Sec. 7)

- . • Every employer is required to provide each employee, within four weeks of employment, written particulars of his/her terms and conditions of employment as contained in a completed form 'A' of the first schedule of this Ordinance.
- . • The form 'A' is signed by both parties, and within one week, a signed copy is lodged with the Labour Commissioner and may be used in any dispute before the Tribunal.

Notice and Dismissal (Sec. 10)

Both parties are required to give the other, certain minimum period of notice to terminate a contract of employment after thirteen weeks of continuous employment, except in the case of dismissal for valid reasons in accordance with this part.

Redundancy (Sec. 16)

An employee, dismissed for reasons of redundancy, is entitled to *severance pay* from his employer as follows:

- 1 to 5 years service – 2 weeks' pay for every year of service
- over five years to 10 years – 2 ½ weeks' pay for every year of service
- over 10 years to 15 years – 3 weeks' pay for every year of service
- more than 15 years – 3 ½ weeks' pay for every year service.

Essential Services Ordinance, 1988

Labour Tribunal (Part V – Sec. 36)

- The Ordinance establishes a Labour Tribunal (The Tribunal) which decides on all disputes and ancillary matters arising out of this Ordinance.
- The decision of the Tribunal is final except on a point of law.
- The *Governor in Council*, after consultation with the Judicial and Legal Services Commission, appoints the Chairman of the Tribunal.
- The *Governor in Council* also appoints six other members, three of whom represent the interests of employees and three of whom represent the interest of employers.
- The Tribunal has the power to issue orders declaring the rights of the parties in any matter arising out of this Ordinance.
- The Chairman of the Tribunal may instruct the Labour Commissioner to take action under this section on the Tribunal's behalf.

Labour Advisory Board (Part VI – Sec. 45)

The Act establishes a *Labour Advisory Board (the Board)* composed of:

- two representatives of the Government appointed by the Governor in Council, one of whom is appointed Chairman;
- one representative of each trade union registered under the Trade Union Ordinance;
- representatives nominated by the Chamber of Commerce equal to the number of trade union representatives;
- one representative each of: -the construction industry; and
-the staff of the Technical College.
- one additional representative appointed by the Governor in Council, representing the interests of workers; and
- the Labour Commissioner or Labour Officer.

This is a *multipartite board* unlike the traditional tripartite boards in other countries.

Function of the Board

The Board advises the Governor in Council on all matters relating to employment of labour; and *the Governor is obliged to consult the Board on all such matters before making any regulation or order to the Legislative Council.*

Other Provisions

The *Employment Ordinance* also includes the procedures, regulation or protection in relation to:

- . • holidays with pay; and
- . • minimum wages.

Essential Services

The *essential services* as listed in the schedule to this Act are:

- . • Air traffic;
- . • Electricity;
- . • Fire;
- . • Medical and Health;
- . • Telecommunications;
- . • Water; and
- . • Ports

Collective Action (Sec. 2) Where any collective withdrawal of labour from an *essential service* is contemplated and written notice is given to the employer in keeping with other requirements of the law, such persons are not liable for breach of contract.

16. Anguilla

Trade Unions Act Revised Statute: (Chapter T 35)

The *Trade Unions Act* like other such acts in the Caribbean, provide for trade unions to be:

- . • registered in keeping with the requirements and procedures of this law;
- . • protected against legal actions for tort, conspiracy and liability in relation to trade disputes; and
- . • properly governed and accountable.

The Labour Department Act revised Statute (Chapter L5 - Sec. 3 – 14)

- The Labour Department Act establishes a Labour Department and provides for the appointment of a Labour Commissioner, Labour Inspectors and other staff, and outlines the duties of and responsibilities of the Labour Commissioner including:
 - administration of the Labour Department and the law and regulations in force;
 - provides advisory and technical service to government, employers and employees; and
 - the authority to *take the steps necessary to resolve complaints*, petitions or notifications of differences between employer and employees.

- The Labour Commissioner is also empowered to institute proceedings in respect of any offence committed by the employer under any labour law administered by the Labour Commissioner, and such proceedings may be prosecuted by a legal representative or by a police officer on behalf of the Department.
- The Labour Commissioner is required to provide an annual report on the operations of the Labour Department.
- The Act outlines the duties and responsibilities of a Labour Inspector, the *powers of inspectors* and duties and obligations of employers.

Dispute Settlement Procedure (Sec. 15)

- Labour disputes are referred by either party to the dispute or by their representative, to the Labour Commissioner for settlement.
- The Labour Commissioner promotes a *voluntary settlement in accordance with good industrial relations practice*, and utilizes the process of *conciliation* or *mediation* or any other device designed to facilitate voluntary settlement.

Reference of dispute to the Minister (Sec. 16)

- If the Labour Commissioner is unable to achieve a voluntary settlement, the Labour Commissioner refers the matter to the Minister who himself/herself attempts a voluntary settlement within twenty-one days.
- Where the Minister fails to achieve a voluntary settlement, the Minister may: -refer the matter *to a Board of Inquiry for recommendation*, if

the parties agree *in advance to accept and act on the recommendations of such a Board*; or -to an *Arbitration Tribunal for settlement*.

Board of Inquiry (Sec. 17)

- The Minister is empowered to appoint a *Board of Inquiry* consisting of one or more persons. Where the number is more than one, the Minister appoints one of them to be Chairman.
- The *Board* inquires into matters referred to it and reports to the Minister.

Appointment of Tribunal (Sec. 18)

- The law empowers the Minister to appoint a *Tribunal to settle any dispute or complaint referred to it by the Minister*.
- The Tribunal consists of *one person appointed by the Minister*. The Tribunal may be *assisted by two assessors*; one representing the employer and the other representing the worker and nominated respectively by them or by their respective representative organizations.
- The *award of a Tribunal is final and binding and may only be appealed on a point of law. (S 19)*

- The *Board of Inquiry* and the *Tribunal* have powers to summon witnesses, obtain information and to administer oaths/affirmations and regulate their own proceedings. (S 20)

Fair Labour Standards Act -Revised Statute - Chapter 15

The Act provides for the *protection, procedures, regulations, rights and entitlements* for several matters affecting employees including:

- termination of employment *without notice*;

- . • termination *with required notice or pay in lieu of notice*;
- . • notification to the Labour Commissioner of *intended termination of five or more employees on the grounds of redundancy*;
- . • limitation on termination of employment limited to *termination for valid reasons connected with the capacity or conduct of the employee, or based on operational requirements of the enterprise*;
- . • provision of minimum period of notice for termination or payment in lieu of such notice;
- . • corresponding or stipulated periods of notice of termination by the employee;
- . • recovery of notice pay through a court of law by civil action.

Unfair or illegal dismissal (Sec. 15)

- . • Any one alleging to have been illegally or unfairly dismissed and the matter is not settled directly by the parties, the matter may be referred for settlement to the Labour Commissioner.
- . • On failure to resolve the matter at the level of the Labour Commissioner, the matter may be referred to the Tribunal

established under the Labour Department Act for *final and binding settlement* in accordance with the provision for compensation under this section.

17.17.17.17. British Virgin IslandsBritish Virgin IslandsBritish Virgin IslandsBritish Virgin Islands

Labour Code: Chapter 243 – 1991

Like Antigua and Barbuda, the British Virgin Islands' labour relations are governed by a Labour Code.

The Code is composed of 6 divisions:

- . • Division A -Declaration
- . • Division B -Administration
- . • Division C -Basic Employment
- . • Division D -Health, Safety and Welfare
- . • Division E -Women, young persons and children
- . • Division F -Work permits

Division A – Declaration

Division A covers *national policy* underlying the Code and relates to the following:

- . • interests of workers, employers and the public should be taken into account, and their representative organizations consulted on national labour policy;
- . • freedom of association;
- . • good and adequate working conditions including occupational health and safety;
- . • equality of bargaining power between employees and their employers; channel of communications, means of resolving differences and avoiding disruptions are encouraged; and
- . • equality in remuneration for equal service.

Division B – Administration:

- . • The Minister of Labour is responsible for the provisions of the code, but may delegate authority as appropriate;
- . • The Labour Commissioner: -is responsible for specific provisions of the Code assigned to him/her; -deals with all labour-related matters and seeks to resolve differences by voluntary adjustment or settlement; and
- supervises labour inspectors whose responsibilities, powers, duties and obligations, not unlike other countries, are outlined in the Code.

Division C – Basic Employment Conditions

- . • Non-discrimination, statement of working conditions, individual employment contract, notice of termination, leave entitlements, remuneration and hours of work;
- . • Severance pay, computation of severance pay and the conditions regulating severance pay; and
- . • Unfair dismissal – *the right not to be unfairly dismissed*; dismissals for valid reasons only.

The Trade Union Act: Chapter 300 – 1940

The *Trade Union Act* is similar to the Trades Union Acts of other Caribbean countries, providing for:

- . • the registration of trade unions;
- . • protection and immunities against criminal prosecution for tort or breach of agreement or trust; and
- . • general regulations for the continued registration and administration of trade union affairs in keeping with this law.

18.18.18.18. Turks and Caicos Islands
Turks and Caicos Islands
Turks and Caicos Islands
Turks and Caicos Islands

The Employment Ordinance, 21 of 2004

This Ordinance regulates the terms and conditions of employment.

Contract of Employment (Sec.3)

- . • a contract without reference to time limit may be terminated by either party subject to the right not to be unfairly dismissed;
- . • a contract for a specified period may be automatically terminated at the end of the date specified in the contract; earlier termination is subject to the right not to be dismissed unfairly; and
- . • a contract for a specific task terminates at the end of the task.

Written Particulars of Terms of Employment (Sec. 4-5)

- . • Within seven days of employment the employer is required to prepare an employment contract in writing correctly describing the terms and conditions of employment agreed to by the employer and the employee, providing such details in keeping with Section 5;
- . • The employer and the employee within fourteen of the preparation are required to sign the employment contract; and
- . • The Governor may require further particulars to be included in the employment contract (Sec. 8)

Employment of Minors (Sec.9)

- . • A person of age 16 and over may enter an employment contract;
- . • A person under the age of 16 years may enter into an employment

contract only with the written consent of the parent or guardian of the person or if none exist with the written consent of the Labour Commissioner.

Disposal of Business and Continuity of Employment (Sec.12)

Where a business or part of it is sold, leased, transferred, or otherwise disposed of, the employment with the successive employers shall be deemed to constitute a single period of continuous employment with the successor employer if the employment was not terminated and redundancy benefit was not paid under this Ordinance.

Power of the Governor to make orders for remuneration and other terms and conditions (Sec. 23)

The Governor, acting on the advice of Executive Council may make an order affecting any employee concerning minimum remuneration, holidays, leave due to illness, redundancy benefit, minimum number of hours to be worked, rates of over time and additional pay, and any other terms and conditions.

Appointment of Commissioner and Inspectors (Sec.31)

The Governor, acting in accordance of the recommendations of the Public Service Commission may appoint a Commissioner of Labour, public officers as assistants or deputies to the Commissioner, and inspectors for the purpose of this Ordinance with such duties and powers outlined in this section, and such other duties and powers as the Governor may specify in writing.

Protection against Unlawful Discrimination (Part iv: Objective, Sec. 34)

The objectives are to:

- . • give effect to provisions of Turks and Caicos Islands Constitution; ILO Convention concerning discrimination in employment and occupation, No. 111 (1958) and ILO Convention concerning equal remuneration, No. 100 (1951), and to certain provisions in the UN Convention on the elimination of all forms of discrimination against women;
- . • eliminate as far as possible, discrimination in employment and occupation against persons on the grounds of race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability, family responsibilities, and pregnancy or marital status; and
- promote recognition and acceptance of the principle of equal opportunity and treatment on the above grounds in employment, occupation and other related

activities including education, vocational training, employment services, provision of goods and services, partnerships and professional trade organization.

Discrimination (Sec. 35)

- . • A person discriminates against another person, on any of the above grounds listed (sec.34), if that person makes any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment;
- . • Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on any of the above grounds is an act of discrimination regardless whether the person responsible for the act or omission or the practice or policy intended to discriminate.

Sexual Harassment (Sec.39)

Any act of harassment – unwanted conduct of a sexual nature in the workplace or in connection with the performance of work – against an employee committed by an employer, managerial employee, or co-worker shall constitute unlawful discrimination based on sex and relating to employment.

Promotion of Equal Remuneration (Sec. 40)

Employers and those acting on behalf of employers shall be obligated to pay equal remuneration to men and women performing work of equal value for the employer.

Termination of Employment (Part v)

- The employment of an employee for an unspecified period of time shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise (Sec. 58);
- Every employee shall have the right not to be unfairly dismissed by his employer (sec. 67)

Summary Dismissal (Sec. 60)

An employer may dismiss summarily without notice or payment of any redundancy or severance payment or terminal benefits to an employee who is guilty of a serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

Constructive Dismissal (Sec. 61)

An employee is entitled to terminate the contract of employment without notice or with less notice, where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship.

Dismissal on Grounds of Redundancy (Sec. 71)

Employees' services may be terminated on the grounds of redundancy where the termination is or is part of a reduction in the work force in keeping with operational requirements, and subject to the requirements and procedures of this section.

Disciplinary Action (Sec. 80)

An employer shall be entitled to take disciplinary action other than dismissal when it is reasonable to do under the circumstances, including in order of severity, a warning, and suspension.

Labour Tribunal (93)

- . • The ordinance establishes a *Labour Tribunal* with jurisdiction to hear and determine any labour dispute or complaint or other matters referred to it under this or any other Ordinance and shall have other functions as may be conferred upon it by any other provision of law;
- . • The Labour Tribunal in exercise of its powers shall not be subject to the direction or control of any other person or authority; and
- . • Orders, decisions, and awards of the Labour Tribunal shall be enforceable in the Supreme Court as though they were orders or judgements of that court.

Composition of Tribunal (Sec. 94)

The Labour Tribunal comprises of the President, and at least two other members appointed by the Governor as follows:

- the President is appointed after consultations such trade unions, employers' organizations and other persons or groups as appear to the Governor to be representative of the views of employees and employers;
- one member each to be representative of the views of employees and employers respectively appointed by the Governor after the required consultation;
- one of the members is appointed Vice President and in the absence of the President may assume the powers of the President of the Labour Tribunal;
- . • a member of the Labour Tribunal is appointed for a period not exceeding five years, and may be reappointed;
- . • any member of the Labour Tribunal may be removed by the Governor any time if there is reasonable evidence that the member is guilty of misconduct, malfeasance or incompetence; and
- . • the Governor, with the approval of the Executive Council, sets the payments and travel expenses for members.

Duties and Powers of the President of the Labour Tribunal (Sec. 95)

- . • The President is the senior member of the Labour Tribunal responsible for the administration of the affairs and the business of the Labour Tribunal.
- . • The President, in the public interest, may issue directions for the full Labour Tribunal to sit together with one or more assessors nominated by or on behalf of employers concerned and an equal number of assessors nominated by or on behalf of employees concerned, all of whom are appointed by the Minister.
- . • Assessors assist the members of the Labour Tribunal but have no vote.

Dispute reported to the Commissioner (Sec.96)

Where an employee believes that there is a dispute concerning the infringement of any rights conferred by this Ordinance, a collective agreement, contract of employment or by any ordinance dealing with occupational health, safety, and the working environment, the employee first refer the dispute to the Labour Commissioner or an inspector who considers the matter and conciliates in the dispute.

Questions of Law (Sec. 98)

- The Labour Tribunal may refer any question of law to the Supreme Court;
- An appeal can be made to the Court of Appeal on a question of law arising from any decision of, or in proceedings before the Labour Tribunal.

Confidentiality in Conciliation (Sec. 101)

- Any matter communicated to the Commissioner or an inspector during conciliation meetings may not be disclosed or admissible in evidence to a Labour Tribunal, except with the consent of the person who communicated it to the Commissioner or inspector.
- The Commissioner or inspectors endeavours to promote a settlement of the complaint without its being determined by the Labour Tribunal.

Employment Agencies (Sec. 104)

In case of an employee provided to a user enterprise by a private employment agency, the agency shall bear responsibility for:

- the employee's protection in the field of occupational safety and health;
- preservation of the employee's right to collective bargaining;
- the employees' access to training; and
- ensuring that the workers they provide to user enterprises are afforded all the rights they are entitled to under this Ordinance or any Ordinance relating to employment and for these purposes shall have access to the user enterprise's premises as trade union representatives under this Ordinance and the Trade Unions Ordinance.

The user enterprise bears responsibility for matters connected with the employee's remuneration; and the Governor may make regulations to regulate employment agencies as necessary or expedient (Sec. 104A).

19.19.19.19.19. SurinameSurinameSurinameSurinameSuriname

Trade union recognition procedures.

Article 1 of the *Decree on the Recognition of Trade Unions* from 24 October 1981 (S. B. 1981 No. 163) stipulates that the employer is obliged to bargain with the board of the trade union by concluding a collective bargaining agreement if:

- the trade union is a statutory body;
- the statute of the trade union stipulates that the trade union can conclude a collective bargaining agreement; and
- the trade union represents the members on whom the collective labour agreement is applicable.

Procedure for redundancy and dismissal

According to Article 2 of the *Dismissal Decree* from 27 January 1983 (S. B. 1983 No. 10) the employer may not terminate the employment of an employee without the explicit permission of the Minister of Labour, if the employee does not agree with the dismissal.

Article 3 of the *Dismissal Decree* stipulates that the prohibition clause referred to in article 2 shall not apply where the termination of employment relationships is:

- by mutual consent;
- by law, as referred to in Article 1615e of the Civil Code. According to Article 1615e of the Civil Code, *employment ends automatically*, if the fixed duration of the

employment expires. In that case observance of regulations regarding notice is required only if it is stipulated or in case such is required by law or custom and parties

have not opted for another procedure;

- . • during the probationary period stipulated, as referred to in Article 1615pl of the Civil Code.
- . • immediate dismissal for reasons of serious misconduct, as referred to in Article 1615p of the Civil Code.

If the employment is terminated for serious misconduct the employer is required to notify the Minister of Labour within *four days*, giving the reasons. The Inspector General, on behalf of the Minister of Labour, must decide within 14 days if he/she agrees or not with the given reasons. If not, the termination is not effective.

Dispute settlement machinery

When a labour dispute cannot be resolved by negotiations between an employer and the labour union representing all workers, this dispute is submitted for *conciliation/mediation to the Mediation Board for Suriname* (established by the *Labour Disputes Act* of 1946 (G. B. 1946 No. 104)).

- . • The composition of this Mediation Board has a *tripartite character* and is established after consulting with the employers' and the workers' organizations.
- . • Public/Civil Service Disputes are not dealt with by the Mediation Board.
- . • Recommendations given by the Mediation Board as a mediator are not binding.

According to the *Labour Disputes Act*, the Mediation Board is also empowered to adjudicate *as an arbitrator on request of the parties*. *Adjudication awards* are binding on the parties.

The Board can also be requested to appoint an *Arbitration Commission* to settle a dispute. *Its awards are also binding to parties*.

Labour Advisory Board.

The *Labour Advisory Board* was established by Decree E-55 of 25 December 1984 (S. B. 1984 No. 105). This board is composed of representatives of the Government, the employers' and the workers' organizations.

The Labour Advisory Board provides advice and guidance on all labour matters and on enactment of new laws in particular.

Labour Administration

The Labour Department was established by the *Terms of Reference of the Department Act of 30 June 1982* (S. B. 1988 No. 39). The *Labour Department* is organized as follows: Under the Minister are the Permanent Secretary and the Inspector General. The Inspector General is in charge of the Directorate Labour of Inspection, while the Under Directorate for Legal and International Affairs, and the Under Directorate for Labour Market are under the direction of the Permanent Secretary.

The *Under Directorate for Legal and International Affairs* is also a division on Labour Laws, and consists of the following departments:

- . • Legislation Bureau;
- . • International Affairs; and
- . • Bureau of Collective Labour Agreement Registration.

The following departments are in the *Under Directorate for Supporting Services*:

- . • Personnel Affairs;
- . • Financial Affairs; and
- . • Administrative, support and secretarial services.

The *Under Directorate for Labour Market* has the following departments:

- . • Labour Market Analysis Department;
- . • Labour Statistics Department;
- . • Employment Agency;
- . • Work Permit Department; and
- . • Labour Market Policy.

The Directorate for Labour Inspection consists of:

- . • the Legal Bureau
- . • the Medical Bureau;
- . • the Research Bureau; and
- . • the Social and Safety Inspection.

Powers of the Head of Department and staff

The Labour Inspection is authorized to prosecute in case of breaches of the Labour Legislation. The Labour Inspection is also empowered to impose a fine (see Article 11 paragraph 2 sub (e) and the Articles 12 and 13 of the Labour Inspection Decree of 25 May 1983 (S. B. 1983 No. 42)).

Occupational Safety and Health

The Occupational Safety Act was adopted in 1947 (G. B. 1947 No. 142) in order to promote the occupational safety and health of workers. According to Article 3 of this Act, the President of the Republic of Suriname can make regulations concerning:

- . • prevention and reduction of industrial accidents and fires, and provide medical assistance in case of accidents and emergency exits;
- . • promotion of hygienic working conditions;
- . • promotion of acceptable temperatures in the workplace;
- . • prevention of the production and spreading or development of toxic substances and agents or dust;
- . • prevention of hazard to health caused by work;
- . • height of work locations and free air space;
- . • daylight and synthetic light;
- . • electrical installations;
- . • dressing rooms, lockers, canteens and dormitories; and
- . • washrooms and other workplace facilities.

These regulations are set out in *enabling decrees*.

20. The Netherlands Antilles and Aruba

The main labour laws of *the Netherlands Antilles and Aruba* include the:

- . • Sections on labour in the Civil Code, 1921;
- . • Labour Dispute Ordinance, 1946; (Aruba 1989 GT 65)
- . • Labour Regulations, 1952; Aruba - Labour Ordinance 1990 GT 57)
- . • Law on Collective Labour Agreement, 1958; (Aruba 1987 GT 9)
- . • Law on Safety, 1958; (Aruba 1990 GT 31)
- . • Minimum Wage Law, 1972; (Aruba 1989 GT 26)
- . • Dismissal Law, 1972; (Aruba 1989 GT 14) and
- . • Severance Payment Regulation, 1983 (Aruba 1998 GT 18).

These laws are applicable only to workers and employees in the private sector of the local island economies and not public employees, and domestic labour in private households. *Employees in the public sector* are subject to regulations from a separate law relating to public employees – civil servants, teachers, clergy, and exempt corporations.

The *civil code section on labour* contains regulations with respect to employment contract, either oral or written, and the rights and obligations of both on termination.

The Law on Labour Disputes

- *Collective labour disputes are subject to legal regulation.* A collective labour dispute is considered to be a dispute involving *twenty-five employees* or more and their employer, contemplating or threatening a strike and/or lock-out in the *private sector*. *Either party* may request the intervention of the *Government mediator* who *mediates* in the dispute. Such mediation takes place in the context of:
 - a strike or the threat of a strike;
 - a deadlock in collective labour negotiations;
 - a dispute as a consequence of deteriorated relationships;
 - trade union recognition issues.

. • This law (article 14) recognizes the right of unions as bargaining agents for collective bargaining purposes by means of a vote of workers resulting in a *50% + majority* of the workers in an enterprise.

. • Employees are under *legal obligations to recognize and treat with the union* elected as the bargaining agent of the workers.

. • In the event of threatened or imminent industrial action, the Government may order: -a *cooling-off period* of up to *thirty days*; or -a *cooling-off period* of up to *ninety days* for essential industries

and services – such as water, electricity, oil refinery.

During the *cooling-off period*, *no strikes, lockouts, or lay-off* are permitted under the law.

Collective Labour Agreement

The rights to *freedom of assembly and to association* of trade unions and employees in line with Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948, are incorporated in the law. For the purpose of concluding a collective agreement, the trade union must have legal personality and its articles of association must include its *capacity to negotiate a collective labour agreement* on behalf of its members.

The Dismissal Law

- No contract of employment is allowed to be terminated without the *prior approval of the Director of Labour* (permit to be granted by the Director of Labour) in circumstances where the employer is required to give the worker notice of termination.
 - The permit may be granted after an investigation by the Department of Labour, and after a non-binding advice to the Director from a tripartite commission on dismissal which comprises an equal number of employer and worker representatives.
 - The Director makes the final decision after considering the advice tendered by the tripartite dismissal commission.
 - Where the Director permits a dismissal, and a worker is dissatisfied with the decision, the worker may *file an appeal in the Civil Court* on the grounds that the dismissal has been unreasonable and the penalty harsh.
 - Termination of employment without the permit from the Director of Labour however, may take place in the following circumstances: -any time during the probationary period; -for urgent reasons – valid reasons or good and sufficient cause;
 - by mutual consent; or
 - end of fixed-term contract.
- A party ending the working relationship illegally is liable to compensate the other party.
- In the case of a contemplated collective dismissal - 25 or more workers, or more than 25% where this *does not* represent five and fewer workers in an enterprise, *this law requires the employer to notify the Director of Labour three months in advance* of such action. The employer is also required to present the Director with a detailed lay-off plan within eight days of such notification; and -the Director is required to deal conclusively with the matter of

the permit for dismissal *within six weeks*.

The Severance Payment Regulation, 1983

- A worker is entitled to severance pay on termination for reasons of redundancy as follows: -one week's pay for 1 – 10 years of service; -1.25 weeks' pay for the next eleven to twenty years of service,
 - and -two weeks' pay for every year over twenty years of service.
- A worker is not entitled to severance pay where he/she is dismissed for valid reasons.

The Law on Safety, 1958

- The law provides for a safe working environment for all workers in all enterprises.
- The Minister of Labour or *an official* acting in the name of the Minister has the *power to stop the operations of an enterprise* where safety regulations are violated and there is an imminent danger which can result in injuries and fatalities to workers.
- Employers are required to report accidents with injuries and deaths immediately to the Government's safety officials or pay a fine or imprisonment for

non-compliance.

Labour Regulations Law, 1952

- . • This law regulates working hours per day and per week, payment of overtime on working days and holidays, prohibition of night work for female workers under eighteen years of age and prohibits child labour.
- . • A tripartite advisory committee comprising of a Chairman, a Vice-Chairman, a Secretary and eight members appointed by state decree *is established with this Act* and constituted from three representatives of Government and four representatives from employers and workers respectively. This committee advises on the workings of this Act and may initiate recommendations for changes.

Minimum Wage Law, 1972

This law provides for minimum wages for certain categories of workers:

- . • industry and crafts ;
- . • financial services – banking and insurance;
- . • commercial services – hotels, restaurants, shops and social organizations;
- and
- . • domestic workers in private households.

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Appendix 1

Ratifications of ILO Conventions by Caribbean member States

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Ratifications of ILO Conventions by Caribbean member States¹
Ratifications of ILO Conventions by Caribbean member States¹

[illegible][illegible]

(International Labour Standards), 1976													
C81 Labour Inspection, Labour Standard	X	X	X	X	X	X	X	X			X	X	
C155 Occupational Safety and Health, 1981	X			X									
C161 Occupational Health Services, 1985													
C129 Labour Inspection (Agriculture), 1969							X						
C88 Employment Service, 1948		X		X								X	
C122 Employment Policy, 1964	X		X					X				X	
C131 Minimum Wage Fixing, 1970	X						X						

¹ as at 30 November 2005

Ratifications of ILO Conventions by Caribbean member States¹

ILO CONVENTIONS	Antigua and Barbuda	Bahamas	Barbados	Belize	Dominica	Grenada	Guyana	Jamaica	St. Kitts & Nevis Saint Lucia	St. Vincent & the Grenadines	Suriname	Trinidad and Tobago
C95 Protection of Wages, 1949		X	X	X	X	X	X		X	X		X
C142 Human Resource Development, 1975	X						X					
C160 Labour Statistics, 1985												
C151 Labour Relations, Public Service, 1978	X			X			X					X
C154 Collective Bargaining, 1981	X			X					X			X
C158 Termination of Employment, 1982	X								X			
Other Conventions												
C2 Unemployment, 1919							X					
C5 Minimum Age (Industry), 1919		X	X	X		X	X		X	X		
C7 Minimum Age (Sea), 1920		X	X	X		X	X	X	X	X		

C42 Workmen's Compensation (Occupational Disease, Revised), 1934		X	X	X			X					X	
C45 Underground Work (Women), 1935		X					X						
C50 Recruiting of Indigenous Workers, 1936		X	X			X	X	X		X			X
C55 Shipowners' Liability (Sick and Injured Seamen) Convention, 1936				X									
C58 Minimum Age (Sea-Revised), 1936				X		X		X					
C62 Safety Provisions (Building), 1937												X	
C63 Statistics - Wages and Hours, 1938			X										
C64 Contracts of Employment (Indigenous Workers), 1939		X				X	X	X		X			
C65 Penal Sanctions (Indigenous Workers), 1939		X	X			X	X	X		X			X
C74 Certification of Able Seamen, 1946			X										

¹
as at 30 November 2005

Ratifications of ILO Conventions by Caribbean member States¹

C86 Contracts of Employment
(Indigenous Workers), 1947

X

X

X

X

X

C89 Night Work (Women-Revised), 1948
Protocol 1990

X

C90 Night Work of Young Persons
(Industry-revised), 1948

X

C92 Accommodation of Crews
Convention (Revised), 1949

X

C94 Labour Clauses (Public Contracts),
1949

X

X

X

X

X

X

X

X

X

X

X

C96 Fee-charging Employment Agencies
(Revised) 1949

X

C97 Migration for Employment (Revised),
1949

X

X

X

X

X

X

X

X

C99 Minimum Wage Fixing Machinery
(Agriculture), 1951

X

C101 Holidays with Pay (Agriculture),
1951

X

X

X

X

X

X

X

X

X

X

C102 Social Security (Minimum
Standards), 1952

X

C103 Maternity Protection (Revised),
1952

X

X

X

C106 Weekly Rest (Commerce and
Offices), 1957

X

C133 Accommodation of Crews (Supplementary Provisions) Conv. 1970				X										
C134 Prevention of Accidents (Seafarers) Convention, 1970				X										
C136 Benzene, 1971							X							
C137 Dockwork, 1973							X							
C139 Occupational Cancer, 1974							X							
C140 Paid Educational Leave, 1974				X			X							

¹ as at 30 November 2005

Ratifications of ILO Conventions by Caribbean member States¹

ILO CONVENTIONS	Anguilla and Barbuda	Bahamas	Barbados	Belize	Dominica	Grenada	Guyana	Jamaica	St. Kitts & Nevis	Saint Lucia	St. Vincent & The Grenadines	Suriname	Trinidad & Tobago
C141 Rural Workers' Organizations, 1975				X			X						
C147 Merchant Shipping (Minimum Standards), 1976 and Protocol 1996		X	X	X	X								X
C149 Nursing Personnel, 1977							X	X					
C156 Workers with Family Responsibilities, 1981				X									
C159 Vocational Rehabilitation and Employment (Disabled Persons), 1983													X
C166 Repatriation of Seafarers (Revised), 1987							X						
C169 Indigenous and Tribal Peoples Convention, 1989					X								
C172 Working Conditions (Hotels and Restaurants), 1991			X				X						
C175 Part-time Work, 1994							X						
C180 Seafarers' Hours of Work and Manning of Ships, 1996											X		
Total ratifications for each country	28	33	39	48	26	31	45	28	9	28	21	28	18

¹ as at 30 November 2005



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